

Proceedings

1 express any opinions until the entire case has been
2 completed.

3 Do not read or listen to any accounts of the
4 case should they be reported in the media. Do not
5 visit or view any place or premises that have been
6 mentioned.

7 You are not to permit any party to discuss
8 the case with you or attempt to influence you, and you
9 must promptly report to the Court any violation
10 thereof.

11 (Whereupon, the sworn jurors exited the
12 courtroom.)

13 MR. CHAMBERLAIN: May we have the witness
14 excused?

15 THE COURT: Yes, please step out, Mr. Kane.

16 THE WITNESS: Sure.

17 (Whereupon, the witness left the witness
18 stand and exited the courtroom.)

19 THE COURT: Two things, Mr. Chamberlain.

20 One, you don't ask for a mistrial in front of a jury.
21 You want to approach the bench and make a record, you
22 can. You don't do that. Do we understand each other?

23 MR. CHAMBERLAIN: We do, Judge. I apologize.
24 It was in the heat of the moment but I have
25 constantly --

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1 THE COURT: Two, I understand that. I have
2 admonished you both to stop it.

3 Mr. Biancavilla, you can make objections any
4 time you want.

5 MR. BIANCAVILLA: My point is you told him
6 not to do something seven different times, seven
7 different ways. He comes back out here every time in
8 front of the jury and keeps asking the same questions
9 that seven different times you told him not to ask.
10 That's the problem I have.

11 MR. CHAMBERLAIN: That's inaccurate, Judge.

12 THE COURT: Mr. Chamberlain, you have to ask
13 the question properly. The rules of evidence say
14 questions are asked certain ways and you have to do
15 that.

16 MR. CHAMBERLAIN: I have been asking
17 questions pursuant to your Honor's rulings which
18 include the fact that I could show the witness the
19 document and ask him if that refreshes his recollection
20 as to those incidents. I did that.

21 THE COURT: You asked him. He said it did
22 and then you asked the question. The upstate, as we
23 all know, was a certificate of disposition which was
24 shown to me for a violation, unlawful possession of
25 marijuana. There may be others you can question him

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1 on.

2 MR. CHAMBERLAIN: I didn't tell him to answer
3 that question.

4 THE COURT: I know you didn't but you're not
5 asking the question properly.

6 MR. CHAMBERLAIN: I asked the question
7 exactly as I was instructed. That was his answer.

8 Your Honor then directed the jury to
9 disregard that and I was trying to point the question
10 to something other than upstate and that's when he gets
11 up and says everything Mr. Chamberlain does is
12 improper.

13 These statements in front of this jury
14 prejudice my client's rights. My client is on trial
15 for murder. I am doing the best I can here and I am
16 getting -- this jury is getting prejudiced by this and
17 your Honor's rulings with respect to that. He should
18 have been forcefully told not to make these comments
19 which he has done repeatedly before this jury.

20 THE COURT: I will tell the jury in the end
21 they are to disregard any colloquy between counsel and
22 counsel and counsel and me. There is no ground for a
23 mistrial here. I told them in the beginning and will
24 again at the end.

25 Mr. Biancavilla made a legitimate objection

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1 and I have a right to rule. You don't have to lose
2 your temper in front of a jury and move for a mistrial.

3 MR. CHAMBERLAIN: I lost my temper --

4 THE COURT: I understand. I want you to both
5 to stop it. Do we understand each other?

6 MR. CHAMBERLAIN: Yes.

7 MR. BIANCAVILLA: Yes, your Honor.

8 MR. CHAMBERLAIN: May we have a short recess,
9 your Honor?

10 THE COURT: We just had one.

11 MR. CHAMBERLAIN: I didn't have one.

12 THE COURT: We just had a recess three
13 minutes ago.

14 MR. CHAMBERLAIN: Judge, may we break for the
15 day. It's almost four o'clock and I have a lot further
16 to go with this witness.

17 THE COURT: I'll work until 4:30 if you are
18 continuing. I'll be glad to continue. I'm not rushing
19 you. Do what you feel is appropriate. You want to
20 take two minutes, go ahead and take two minutes.

21 (Whereupon, a brief recess was taken.)

22 THE COURT: One thing, your application for a
23 mistrial is denied.

24 MR. CHAMBERLAIN: I respectfully except.

25 May we have the jury advised to disregard any

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1 comments by Mr. Biancavilla?

2 THE COURT: I will not specifically say to
3 one or the other because you have both been doing it.
4 I will advise the jury to disregard any comments,
5 colloquy between counsel or colloquy with me. I will
6 be glad to do that.

7 COURT OFFICER: Jury entering.

8 (Whereupon, the sworn jurors entered the
9 courtroom and resumed their respective seats.)

10 THE CLERK: Do both sides stipulate all sworn
11 jurors are present and seated properly?

12 MR. BIANCAVILLA: Yes.

13 MR. CHAMBERLAIN: Yes.

14 THE COURT: Ladies and gentlemen, there have
15 been some verbal exchanges between or among counsel.
16 You must disregard that entirely and you must not draw
17 any inferences from anything said by one counsel to the
18 other.

19 Additionally, you may have heard colloquy or
20 conversation between the Court and counsel. Bear in
21 mind that such exchanges between the Court and counsel
22 do not constitute evidence in the case and you must
23 disregard it.

24 Finally, I instruct you that arguments made
25 during the course of trial are not evidence and must

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1 not be considered by you as such.

2 Mr. Chamberlain, Mr. Biancavilla, are we
3 ready to proceed?

4 MR. BIANCAVILLA: Yes, your Honor.

5 MR. CHAMBERLAIN: Yes, Judge.

6 THE COURT: Bring the witness in.

7 (Whereupon, the witness resumed the witness
8 stand.)

9 CONTINUED CROSS

10 BY MR. CHAMBERLAIN:

11 Q Mr. Kane, will you review the same page of
12 Defendant's X. Listen carefully to the question.

13 THE COURT: I believe it's Y,
14 Mr. Chamberlain.

15 MR. CHAMBERLAIN: Thank you, Judge.

16 Q Listen carefully to the question, Mr. Kane. Other
17 than what you have already testified to, other than that,
18 does that document refresh your recollection as to whether
19 or not you have been convicted of a felony or a misdemeanor
20 at any other place?

21 A I don't know what a misdemeanor is, actually. Can
22 you explain that to me?

23 MR. BIANCAVILLA: Objection.

24 THE COURT: Sustained.

25 MR. CHAMBERLAIN: What was the objection to?

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1 THE COURT: To explain what a misdemeanor
2 was. I sustained the objection as to that.

3 Q Does it refresh your recollection as to whether or
4 not, other than what you have already testified to, you have
5 been convicted of a crime --

6 MR. BIANCAVILLA: Objection.

7 THE COURT: Go ahead.

8 Q -- at any other place?

9 THE COURT: I'll permit that.

10 MR. CHAMBERLAIN: Thank you.

11 A No, it doesn't.

12 MR. BIANCAVILLA: Objection.

13 MR. CHAMBERLAIN: Don't object to his answer.

14 I object to that.

15 THE COURT: Excuse me.

16 MR. CHAMBERLAIN: I am sorry, Judge. He is
17 objecting to the witness starting to answer like he's
18 directing the witness. That's improper, Judge.

19 THE COURT: Are you finished with your
20 answer?

21 THE WITNESS: Do you want to read it over
22 again?

23 MR. CHAMBERLAIN: Read the question back.

24 THE COURT: Read it back.

25 (Whereupon, the court reporter read back the

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1 requested question.)

2 THE COURT: Ask it again.

3 MR. CHAMBERLAIN: He was in the middle of an
4 answer, Judge.

5 THE COURT: Do you understand the question?

6 THE WITNESS: I don't see where we are at
7 with the question.

8 THE COURT: Start the question again.

9 Q Other than, Mr. Kane, what you have already
10 testified to, do those -- does that document refresh your
11 recollection as to whether or not you have been convicted of
12 a crime any place other than the place you have already
13 indicated?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: I'll permit it.

16 A No.

17 Q It doesn't, and that's your full answer now?

18 A Convicted of a crime --

19 MR. BIANCAVILLA: Judge --

20 THE COURT: Sustained.

21 Q All right. Let me have that back.

22 During that interview with Detective McHugh and
23 that other detective, after asking about your background,
24 were you asked a series of questions concerning financial
25 problems and the dart team and who was on it, do you recall

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1 any such questions?

2 A About the dart team?

3 Q Yeah.

4 A Yeah.

5 Q And about financial problems?

6 A I don't remember anything about financial
7 problems.

8 Q Did you tell the detectives you had financial
9 problems?

10 A Not that I remember, no.

11 Q Did you tell them that your prior work was two
12 months prior to that?

13 A What was the question?

14 Q That your prior work was two months prior --
15 withdrawn.

16 Did you tell them you had worked two nights
17 last -- working the last two nights and the prior work had
18 been two months previous?

19 A Is that a question?

20 Q Yes. Did you tell them that?

21 A Sounds familiar. I'm's not sure.

22 Q And you said about the dart team -- what did you
23 tell them about the dart team?

24 A That there was a dart team on Tuesday night and
25 Paul Scrimo was on it.

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1 Q Did you tell them when it started and when it
2 ended?

3 A Correct.

4 Q Did you tell them how many teams there were?

5 A Yes.

6 Q Did you tell them how successful the team was?

7 A I don't recall.

8 Q Did you tell them they were undefeated?

9 A I don't recall.

10 Q You don't recall. But you do recall discussing
11 the dart team and the fact that Mr. Scrimo was on it; right?

12 A Correct.

13 Q Do you recall telling them two other people had
14 been tossed off the team, Jerry and Jerry's old lady,
15 somebody by the name of Jerry had been tossed off?

16 A I don't recall.

17 Q In any event, you recall discussing with them this
18 dart team?

19 A Yes.

20 Q And that's the dart team that you had visited the
21 Tuesday after the murder and the subsequent Tuesday; right?

22 A Correct.

23 Q Then did you discuss Ruth with them?

24 A Did I discuss Ruth?

25 Q Yes.

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1 A Yes, with the detectives.

2 Q Yes?

3 A Yes.

4 Q And you testified before this jury you used the
5 word Ruthy. Did Ruth have a nickname?

6 A I called her Ruthy.

7 Q You called her Ruthy. Did you tell the detectives
8 her nickname was Ruthless?

9 A Right.

10 Q By the way, Mr. Kane, did you have a nickname in
11 the area of the bar?

12 A Probably but I don't recall it.

13 Q You don't recall?

14 A No.

15 Q What about John D, does that refresh your
16 recollection?

17 A No.

18 Q John Doe?

19 A Yes.

20 Q Yes, and what's your middle initial, by the way,
21 Mr. Kane?

22 A M.

23 Q M. Not D, M?

24 A Yes.

25 Q Do you have any reason for -- that you know of,

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1 any reason why you had a nickname of John Doe in the
2 Farmingdale area?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: I'll permit it.

5 A No, I don't.

6 Q Did you have any knowledge as to whether or not
7 John Doe was a term associated with any particular activity
8 in connection with bikers?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: I'll permit it.

11 A No.

12 Q Did you have any knowledge about John Doe being a
13 name ascribe to people that supply drugs?

14 A No.

15 Q No?

16 A No.

17 Q John Doe is normally associated, Mr. Kane, with
18 being anonymous, not letting someone know your last name; is
19 that right?

20 MR. BIANCAVILLA: Objection.

21 Q Do you know?

22 THE COURT: If he knows that.

23 A What was the question?

24 THE COURT: Do you understand the question?

25 THE WITNESS: No.

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1 THE COURT: Repeat the question,
2 Mr. Chamberlain.

3 Q John Doe is normally, the name John Doe is used,
4 it's to keep someone from knowing the real name; is that
5 right?

6 MR. BIANCAVILLA: Objection.

7 THE COURT: As to form, sustained.

8 Q You have no idea why you were known as John Doe;
9 is that right?

10 MR. BIANCAVILLA: Objection. Assuming facts
11 not in evidence.

12 THE COURT: Sustained.

13 MR. CHAMBERLAIN: He just testified he didn't
14 know.

15 THE COURT: That's right, he did. Overruled.

16 A What was the question?

17 Q You have no idea why you were known by the
18 nickname John Doe?

19 A No.

20 Q Now, what else did you tell the detectives about
21 Ruth, or Ruthless, as you called her?

22 MR. BIANCAVILLA: Objection.

23 A I didn't call her that.

24 THE COURT: Sustained.

25 Q You testified here that you told them --

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1 A She had a nickname Ruthless. That wasn't my
2 nickname for her.

3 Q That was her nickname and you told that to the
4 detectives, did you not?

5 A Correct.

6 Q What was your name for her, sir?

7 A Ruthy.

8 Q Did you tell them how long you had known Ruthy?

9 A Yes.

10 Q What did you tell them?

11 A Two years.

12 Q Did you tell them anything else about her?

13 A As far as?

14 Q As far as what she was like, what your
15 relationship was, anything?

16 A I don't recall exactly what I told them.

17 Q Did you tell them that she was a drinker?

18 A I met her in a bar.

19 Q So you told them that she was a drinker; is that
20 right?

21 A I don't recall.

22 Q Did you tell them about your relationship with
23 her?

24 A Yes.

25 Q What did you tell them about the relationship?

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1 A That I knew Ruthy and I was intimate with her
2 sexually.

3 Q Did you tell them of that intimacy sexually?

4 A No, I didn't get into details.

5 Q I have to be brutally frank here, and I apologize
6 to Mr. Kane and the jury, but didn't you tell them no
7 fucking, BJ only?

8 A Excuse me?

9 Q Didn't you tell them no fucking, blow job only?

10 A I don't recall.

11 Q Well, it was a fact that there was no fucking,
12 blow jobs only in the past?

13 A Correct.

14 Q What?

15 A Correct.

16 Q Did you tell them you never called her?

17 A Excuse me.

18 Q Did you tell them you never called her?

19 A I don't recall.

20 Q Did you tell them you just -- did you tell them
21 how many times you had had these sexual encounters?

22 A I don't recall if I told them that.

23 Q Would two or three times refresh your
24 recollection?

25 A No, it doesn't.

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1 Q Let me show you the exhibit, defendant's Y, and
2 see if that -- middle of page four, does that refresh your
3 recollection?

4 A Okay. Your question?

5 Q Is that what you told them, two or three times?

6 A Yes.

7 Q Is that true?

8 A Yes.

9 Q Wasn't it more like five or six times?

10 A I don't recall. It seems about three times.

11 Q We have gone to two to three and now -- withdrawn.

12 MR. BIANCAVILLA: Objection.

13 THE COURT: It's withdrawn.

14 Q Did you ever tell anyone five or six times,
15 Mr. Kane?

16 A Not that I recall.

17 Q Each time, whatever the number of times, it was
18 just in the vernacular, just a blow job; is that right?

19 A Correct.

20 Q Did you tell them about other people that saw
21 Ruth, Ruthy at that period of time, other boyfriends, other
22 persons?

23 A Not that I recall.

24 Q Just below the portion you just read, will you
25 take a look at that and see if it refreshes your

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1 recollection?

2 Let me withdraw that question.

3 Did you tell them that you saw her a number of
4 times with a big blond guy?

5 A Yes. Yes, I did.

6 Q Did you tell -- did you describe, did you call her
7 a player?

8 A Not that I recall, no.

9 Q I'll show you this, Mr. Kane, and ask you if that
10 refreshes your recollection, same page, two thirds of the
11 way down the page?

12 A No, it doesn't recall my memory of saying that
13 but...

14 Q It doesn't refresh your recollection as to what
15 you called her?

16 A No, it doesn't.

17 Q Do you know the term player?

18 A Yes, I do.

19 Q Was that a term that you have used previously?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: Sustained.

22 Q Do you recall discussing the last time you had had
23 oral sex with the victim?

24 A With the victim?

25 Q Yes, with -- this is all about May 2nd after you

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1 were picked up and brought to homicide and you're being
2 questioned by --

3 MR. BIANCAVILLA: Judge, objection.

4 THE COURT: Overruled.

5 A Yes, I understand.

6 Q Do you understand what we are talking about?

7 A Yes.

8 Q May 2nd, did you tell them about last time you had
9 been with the victim and had an instance of oral sex?

10 A Yes.

11 Q Pardon?

12 A Yes.

13 Q And how long prior to that May 2nd interview did
14 you tell them that was?

15 A About a month before.

16 Q Would four to six weeks refresh your recollection?

17 A Yes, a month before.

18 Q Before the murder; right?

19 A Correct.

20 Q You didn't tell them anything about that thing you
21 testified to here today about when you claim the murder
22 occurred?

23 MR. BIANCAVILLA: Objection to the form.

24 THE COURT: Sustained. Sustained as to the
25 form, Mr. Chamberlain.

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1 Q This instance that you told them about had nothing
2 to do with the murder you testified to; is that correct?

3 A That I just said about a month before?

4 Q About four to six weeks before.

5 A Did that have anything to do with the murder?

6 Q Yes.

7 A No.

8 Q Up until that time, you hadn't told them anything
9 about being in her apartment on April 12th, 2000; right?

10 A Right.

11 Q And according to you, you had been in her
12 apartment then; right?

13 A When?

14 Q On April 12th.

15 A Correct.

16 Q And you had had, from April 12th until May 2nd to
17 think about what you were going to tell the police; isn't
18 that a fact?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Overruled.

21 A Would you repeat the question?

22 Q When you were being questioned by these homicide
23 detectives, you had from April 12th until May 2nd to think
24 about what you were going to tell the police?

25 A Yes.

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1 Q And you told them that the last time you had oral
2 sex was four to six weeks before May 2nd; right?

3 A Correct.

4 Q And what did you tell -- where did you come from
5 on that occasion?

6 A Excuse me?

7 Q Where had you been prior to the oral sex?

8 MR. BIANCAVILLA: Objection, Judge.

9 THE COURT: What date?

10 MR. CHAMBERLAIN: He said four to six weeks.

11 THE COURT: Sustained.

12 Q Are you talking about the last time you told the
13 detectives you had oral sex, did you tell them where you had
14 come from before you had oral sex?

15 A Yes.

16 Q Where was that?

17 A Falcon's Nest.

18 Q Where did the oral sex take place?

19 A In Ruthy's apartment.

20 Q Did you tell them where that apartment is located?

21 A Yes.

22 Q What did you tell them?

23 A That it was above the Downtown.

24 Q And then did you describe that incident to them,
25 that occasion?

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1 A Not that I recall. Describe? I just told them.

2 Q Did you tell them that you played music, that you
3 had beer, and you had a blow job on the living room couch,
4 did you tell them that?

5 A Sounds right.

6 Q Did you tell them that you nodded off, woke up
7 between six and seven and went home?

8 A Right.

9 Q Did you tell them not, not naked, no bed, she, bra
10 and panties, no fucking ever?

11 A Right.

12 Q Ever?

13 A Right.

14 Q Mr. Kane, again I have to ask embarrassing
15 questions. I do so reluctantly but this oral sex we are
16 talking about, was that strictly one way? Did she perform
17 oral sex on you?

18 A Correct.

19 Q Did you ever perform oral sex on her?

20 A No.

21 Q Never?

22 A No.

23 Q Did you ever undress her?

24 A Excuse me?

25 Q Did you ever undress her?

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1 A Maybe take her shirt off.

2 Q Other than her shirt?

3 A No.

4 Q Now, there was a further discussion, was there
5 not, concerning some money being owed? I am talking about
6 the discussion between you and the two homicide detectives
7 on May 2nd.

8 A Money being owed?

9 Q Did somebody loan somebody some money?

10 MR. BIANCAVILLA: Judge, I object.

11 Q Did you tell them --

12 THE COURT: Wait. Wait. There is an
13 objection on the floor.

14 MR. CHAMBERLAIN: I'll withdraw that
15 question.

16 THE COURT: What's the nature of the
17 objection.

18 MR. BIANCAVILLA: No date or specific time.

19 THE COURT: Please, be more specific,
20 Mr. Chamberlain.

21 MR. CHAMBERLAIN: To be honest, I am having
22 trouble reading these notes here.

23 THE COURT: That may be.

24 Q This Friday, does that refresh your recollection
25 as to the time?

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1 A Excuse me?

2 Q You were talking about somebody lending somebody
3 money and you said, the notes say, I think, Friday. Does
4 that refresh your recollection?

5 A No, it doesn't.

6 Q Does the sum of \$50 refresh your recollection.

7 A No, it doesn't.

8 Q Did you -- was there discussion between you and
9 Ruthy concerning some money that you owed her on the evening
10 of April 11th in the early morning hours of April 12th?

11 A No.

12 Q Was there -- do recall any conflict about the
13 amount of money owed?

14 A No.

15 Q You claimed a lower figure and she claimed a
16 higher figure?

17 A No idea what you are talking about.

18 Q When you told the detective somebody -- I think,
19 I'm not sure if this was Ross, but it may be Ross, lending
20 \$50, was that conflict -- in connection with Ruth?

21 MR. BIANCAVILLA: Objection to form.

22 THE COURT: Sustained.

23 Q Did you tell the detectives anything about
24 somebody loaning somebody \$50?

25 A Ross lent me fifty bucks.

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1 Q Ross lent you fifty bucks. Was that in connection
2 with his telling you that Ruth had been killed?

3 A Correct.

4 Q So you are telling the detectives that when Ross
5 told you Ruth had been killed, he loaned you \$50; is that
6 it?

7 A I believe it was the same day, yes.

8 Q What day was that?

9 A I don't recall.

10 Q So you're telling these detectives that Ross told
11 you that Ruthy had been killed?

12 A Correct.

13 Q Which is not true; right?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: Overruled.

16 MR. CHAMBERLAIN: Did we get an answer?

17 THE COURT: No.

18 A Question again?

19 Q Which was not true, right?

20 A That Ross told me about it?

21 Q Yes.

22 A He told me that day but I knew about it.

23 Q That's not what you told the detectives?

24 A No.

25 Q Did you tell the detectives that night at the Y.L.

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1 Childs, Mike, the bartender, had given you a card from the
2 police and you were told to call?

3 A Which night?

4 Q We are talking about when you told the detectives
5 on May 2nd that this would appear to refer to Friday after
6 the murder, two or three days after the murder?

7 A Right.

8 Q Right. And that's why you called McHugh at
9 11:00 a.m. Saturday?

10 A I called him that night.

11 Q And you told the detectives on May 2nd who the
12 people were that were hanging out at Y.L. Childs until
13 closing; is that right?

14 A Excuse me?

15 Q Did you tell the detectives the people that were
16 hanging out at Y.L. Childs until closing?

17 A Did I tell the detectives what?

18 Q Who -- did you tell the detectives who was hanging
19 out at Y.L. Childs?

20 A I don't recall.

21 Q Do the names Nester, Hernandez, Diedra, Janet,
22 hanging out until closing refresh your recollection?

23 A Yes. Yes.

24 Q And David Zaranich (phonetic)?

25 A I don't recall that.

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1 Q Until 4:00 a.m., does that refresh your
2 recollection?

3 A Yeah.

4 Q Did you tell the detectives at that time anything
5 about the defendant, Scrimo, being with you?

6 A No.

7 Q He wasn't one of the people you indicated was
8 there; right?

9 A Excuse me?

10 Q He was not one of the people that you told the
11 detectives was there; right?

12 A No.

13 Q Mr. Kane, did you then tell the detectives that --
14 that there was a big bald guy there, not Paul?

15 A I don't recall that.

16 Q Well, he was not big -- let me show you page five,
17 I believe, page five --

18 THE COURT: Defendant's Y.

19 MR. CHAMBERLAIN: Defendant's Y. Thank you,
20 Judge.

21 Q The middle of the page.

22 A I don't get these notes. This is what I'm
23 supposedly saying to McHugh over the phone?

24 Q No. May 2nd, you are in Homicide?

25 MR. BIANCAVILLA: Objection.

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1 THE COURT: Sustained.

2 Q You're in Homicide, you are being questioned after
3 you are brought in there, you are being questioned by McHugh
4 and another detective?

5 A Right.

6 Q Right. You are asked about a big bald guy?

7 A Right.

8 Q And what did you say about that?

9 A That I didn't know a big bald guy with tattoos.

10 Q Is that a question or answer?

11 A It has nothing to do with these notes, but --

12 Q The notes say that guy was not bald?

13 MR. BIANCAVILLA: Objection to what the notes
14 say.

15 THE COURT: Sustained.

16 Q Were you asked about a big bald guy?

17 A Yes.

18 Q Did you tell the detectives he wasn't bald, he's
19 not big --

20 A No. No.

21 Q He wasn't bald, his head was shaved?

22 A I said I didn't know --

23 Q Would you read the note?

24 MR. BIANCAVILLA: Objection. He's answering.

25 THE COURT: He's answering your question.

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1 MR. CHAMBERLAIN: I'm sorry, Judge.

2 A I remember him asking me if I knew a bald guy with
3 tattoos and I said, no, I didn't.

4 Q Did they say a big bald guy?

5 A A big bald guy with tattoos.

6 Q Did you exchange -- did you say it was not Paul?

7 A No, I don't remember saying that at all. I was
8 saying I didn't know.

9 Q Did you describe Paul --

10 MR. BIANCAVILLA: Objection. He's answering.

11 THE COURT: Were you finished with your
12 response?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Ask another question.

15 Q Would you read that note again and I ask you if
16 you describe Paul at that point?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: As to form, sustained.

19 Q Read the note and see if it refreshes your
20 recollection?

21 MR. BIANCAVILLA: Objection. He didn't say
22 he needed to have his recollection refreshed.

23 THE COURT: Ask your question first,
24 Mr. Chamberlain, and see if the witness can respond.

25 Q Do you recall what you were told at this point in

People - Kane - Cross

1 the interview between you and McHugh in Homicide? Do you
2 recall the details?

3 A About Paul not having a shaved head at the time?

4 Q Yes.

5 A Yes.

6 Q You told them that?

7 A I told them that, right.

8 Q Why did you tell them Paul didn't have a shaved
9 head? They were asking -- Paul didn't have a bald head or
10 shaved head?

11 A Shaved head.

12 Q Didn't Paul have a shaved head?

13 A Yes, he did.

14 Q So it was a bald head; is that correct?

15 A No.

16 Q No, not his head?

17 MR. BIANCAVILLA: Judge, I object.

18 THE COURT: Sustained.

19 MR. CHAMBERLAIN: Pardon me, Judge?

20 THE COURT: Sustained. I think this may be a
21 good time to break.

22 Ladies and gentlemen, we are going to break
23 now and ask you to be here at 9:30 tomorrow.

24 Do not discuss the case amongst yourselves or
25 with anyone else. Keep an open mind. Do not form or

People - Kane - Cross

1 express any opinions until the entire case has been
2 completed.

3 Do not read or listen to any accounts of the
4 case should they be reported in the media. Do not
5 visit or view any place or premises that have been
6 mentioned.

7 You are not to permit any party to discuss
8 the case with you or attempt to influence you, and you
9 must promptly report to the Court any violation
10 thereof.

11 Have a pleasant evening and we'll see you
12 tomorrow morning

13 (Whereupon, the sworn jurors exited the
14 courtroom.)

15 THE COURT: Mr. Kane, we'll see you tomorrow
16 morning at 9:30 a.m.. Do not discuss this case with
17 anybody.

18 THE WITNESS: Okay.

19 (Whereupon, the witness left the witness
20 stand and exited the courtroom.)

21 MR. BIANCAVILLA: For the record, I want to
22 set forth something with regard to permitting
23 Mr. Chamberlain to continually ask the defendant
24 whether something was truthful or not.

25 I set forth on the record the basic

Proceedings

1 foundation must be laid for impeachment of a witness
2 for a prior inconsistent statement. I am reading from
3 Prince-Richardson on evidence, section 6-411.

4 Introduction of inconsistent oral statements
5 as impeaching evidence requires asking the witness
6 whether the statements were made specifying the time
7 and place, the person to whom made, and the language
8 and the substance of that language used.

9 Then, going on, Judge, if the witness without
10 explanation or qualification admits having made the
11 statement, that is the end of the inquiry because the
12 witness has discredited himself and there is no need
13 for contradiction.

14 The questions that he asked, Judge, again,
15 for the record, are improper because they call for a
16 conclusion that only the jurors should be drawing.

17 THE COURT: Counsel, Mr. Chamberlain, I
18 expect you to be ready tomorrow, if you decide to put
19 on a case, to begin your case tomorrow.

20 MR. CHAMBERLAIN: All right.

21 THE COURT: I believe this is the People's
22 last witness.

23 MR. BIANCAVILLA: Yes, it is.

24 MR. CHAMBERLAIN: I'll be ready, at least in
25 part. I indicated --

Proceedings

1 THE COURT: You said you had a problem with
2 an expert regarding his not being able to be here
3 tomorrow. You said it was a Jewish holiday.

4 MR. CHAMBERLAIN: Yes, and there's at least
5 one other expert I may have trouble getting.

6 MR. BIANCAVILLA: Whatever experts come in
7 tomorrow, I won't be prepared. I need a date certain
8 for the expert so I can get mine up from South
9 Carolina.

10 MR. CHAMBERLAIN: I don't expect to have any
11 experts tomorrow.

12 THE COURT: Do you have witnesses tomorrow?

13 MR. CHAMBERLAIN: Yes. I think we'll
14 probably be able to fill the day.

15 MR. BIANCAVILLA: May we have an offer of
16 proof on that, please?

17 MR. CHAMBERLAIN: No.

18 THE COURT: Excuse me. That's my decision.

19 MR. CHAMBERLAIN: We have discussed it. I
20 have a whole list of witnesses. I didn't get a
21 accurate list of witnesses. I got a list this morning,
22 of five witnesses, none of whom were put on, and I
23 don't think there was any intention to put any of those
24 witnesses on.

25 MR. BIANCAVILLA: My request for an offer of

Proceedings

1 proof is because their testimony may not be admissible
2 at this trial. I want a ruling from the Court to make
3 that determination.

4 THE COURT: With respect to the offer of
5 proof, Mr. Chamberlain, are these factual witnesses you
6 will be putting on? That's what I would like to know
7 at this point.

8 MR. CHAMBERLAIN: I think the answer is
9 basically, no, Judge, except for the witness we have
10 already discussed and you have indicated I can
11 cross-examine them --

12 THE COURT: Well, there may be a problem with
13 that because subsequent to that statement I made, I had
14 my law secretary do research with respect to collateral
15 evidence and, apparently, I may not be correct with
16 respect to that. The court of appeals has spoken. I
17 will be glad to let you look at the cases that we
18 found.

19 MR. CHAMBERLAIN: I think I am aware of the
20 rules on collateral evidence, Judge. This is not
21 collateral.

22 THE COURT: Give me an offer of proof and
23 I'll see if it's relevant.

24 MR. CHAMBERLAIN: I think it's relevant when
25 we are talking about a witness or witnesses who will

Proceedings

1 place -- who will define the relationship between the
2 chief witness and the only witness that the People
3 really have in this case that ties this defendant to
4 the murder.

5 There may be other evidence, inferential
6 evidence, he may not have told the truth. He may have
7 been near or gone to a particular point. There's
8 nobody that ties this defendant to this murder other
9 than this witness and there's no physical evidence.
10 More importantly, there's an absence of physical
11 evidence, which should be there, that ties my defendant
12 to this murder.

13 THE COURT: That's for summation.

14 MR. CHAMBERLAIN: I understand.

15 THE COURT: I'm concerned, if you are trying
16 to bring in collateral witnesses with respect to the
17 credibility of Mr. Kane. That's why I said we did
18 research and I can tell you what the court of appeals
19 said and I'll be glad to let you look at those cases
20 now.

21 MR. CHAMBERLAIN: I am interested in bringing
22 evidence of Mr. Kane's relationship with the victim.

23 THE COURT: I have no problem with that.

24 MR. CHAMBERLAIN: That I understand.

25 THE COURT: I am concerned about, with

Proceedings

1 respect to the credibility of Mr. Kane, with respect to
2 those questions you asked on cross-examination, for
3 example, you gave me the offer that Mr. Ball would
4 testify to something else.

5 MR. CHAMBERLAIN: I indicated --

6 THE COURT: That was what he stated under
7 oath.

8 However, the general rule of evidence in the
9 State concerning impeachment of witnesses with respect
10 to collateral matters is that the cross-examiner is
11 bound by the answers of the witness to questions
12 concerning collateral matters inquired into solely to
13 affect credibility.

14 It is well established that the party who is
15 cross-examining a witness cannot introduce extrinsic
16 documentary evidence or call other witnesses to
17 contradict a witness' answers concerning collateral
18 matters solely for the purpose of impeaching that
19 witness' credibility.

20 The rule is premised on sound policy
21 considerations for if extrinsic documentary evidence
22 which is otherwise inadmissible is allowed to be
23 introduced to contradict each and every answer given by
24 a witness solely for the purpose of impeaching a
25 witness, numerous collateral minitrials would arise

Proceedings

1 involving the accuracy of each of the witness' answers.
2 The resulting length of the trial would by far outweigh
3 the limited probative value of such evidence.

4 I am reading from the case of People versus
5 Pavao, Court of Appeals, 59 NY2d 282.

6 MR. CHAMBERLAIN: That's not my understanding
7 of law that goes way back, Judge.

8 THE COURT: Do you plan on introducing
9 Mr. Ball?

10 MR. CHAMBERLAIN: Yes, I do.

11 THE COURT: What is the offer of proof with
12 respect to his testimony.

13 MR. CHAMBERLAIN: I have indicated to the
14 Court -- you have a transcript of that.

15 THE COURT: I just said the court of appeals
16 won't permit you to do that.

17 MR. BIANCAVILLA: May I make reference to
18 another case?

19 THE COURT: Yes.

20 MR. BIANCAVILLA: So the record is clear, the
21 Second Department has also interpreted that case in the
22 matter of People v. Lyde, that's L-Y-D-E, 160 AD2d 817,
23 and that's a case from April the 19th, 1990, where the
24 Second Department said also find no error with the
25 trial court's exclusion of testimony concerning the

Proceedings

1 complaining witness' reputation for bad moral character
2 and his alleged drug trafficking activities.
3 Impeachment of a witness by evidence of his reputation
4 in the community is limited to reputation for truth and
5 veracity and may not extend to general bad moral
6 character. Additionally, impeachment by use of
7 immoral, vicious or criminal acts is appropriate only
8 on cross-examination and not by use of extrinsic
9 evidence.

10 That's a Second Department case that was
11 decided in 1990, Judge.

12 THE COURT: The cite?

13 MR. BIANCAVILLA: 160 AD2d '817, and also
14 followed by the Third Department in People v. Barnhill
15 188 AD2d 884. In Barnhill, the Third Department also
16 adopted the same rule from the Second Department which
17 interpreted Pavao as I have indicated on the record.

18 MR. CHAMBERLAIN: Judge, may I be heard?

19 THE COURT: Yes.

20 MR. CHAMBERLAIN: The general rule about
21 prior acts with respect to hearsay exceptions for --
22 with respect to reputation is accurate. However, a
23 reputation for truthfulness or veracity, credibility,
24 is -- can be brought out by people, and I respectfully
25 submit, can be brought out by people that know somebody

Proceedings

1 is a drug dealer. I think it is inherently --

2 THE COURT: Have you done research on this?
3 Have you got case law?

4 MR. CHAMBERLAIN: I have done some research
5 on Richardson.

6 THE COURT: Why don't you give that to me.

7 MR. CHAMBERLAIN: It's in Richardson, Judge.

8 THE COURT: I would be glad to do it myself
9 tonight, but I'm asking if you have case law with
10 respect to the proposition you're asking me to accept.

11 MR. CHAMBERLAIN: Judge, I don't need to have
12 an argument with your Honor, but I can bring out, by
13 reputation -- it's a standard section of Richardson.

14 I would also like to say that in this
15 particular case I can bring out a witness' reputation
16 for truthfulness, which I don't think Mr. Biancavilla
17 will disagree with. I think a witness who knows of
18 that reputation and has an element of a person being
19 untruthful because he's inherently -- because they know
20 he's a drug dealer, is relevant and should be
21 permitted.

22 Specifically, in this case, the witness has
23 now testified -- and he's testified that he has had
24 encounters with this poor woman who was murdered. I
25 don't think that's anything that will support the

Proceedings

1 People's position that this was an act -- this
2 relationship was one of either companionship or
3 affection, which is what he opened to the jury on.

4 I think it implies -- and I will have
5 evidence that there was a relationship involving drugs,
6 that he was supplying drugs to her, and I have evidence
7 to support that.

8 THE COURT: Mr. Chamberlain, may I suggest
9 you read, because I'm reading the next paragraph --

10 MR. CHAMBERLAIN: I think I read it.

11 THE COURT: 59 NY2d 282, where, however, the
12 cross-examiner does not seek to contradict specific
13 answers given by a witness, but, rather, attempts only
14 to show that the witness has a bad reputation in the
15 community for truth and veracity, the rule is
16 different. The rule in such cases is that other
17 qualified witnesses may be called to testify with
18 respect to the witness' reputation for untruthfulness

19 MR. CHAMBERLAIN: Judge, I am saying --

20 THE COURT: I'm saying you can't do it, but,
21 please. Read Pavao 59 NY2d, 282, and I'm reading --

22 MR. CHAMBERLAIN: I don't understand that.
23 Based on your Honor's prior ruling, I have now brought
24 out certain names in front of this jury believing I
25 would be able to get these people in. I am going -- if

Proceedings

1 I can't --

2 THE COURT: Make your record, but you're
3 incorrect, Mr. Chamberlain.

4 MR. CHAMBERLAIN: I believe Judge Ort's
5 decision as to prior -- what appears to be brought out
6 with respect to credibility and the credibility of this
7 witness being central to this case, is already the law
8 of the case. I would like that as part of this
9 argument, Judge Ort's decision after the Huntley
10 hearing.

11 THE COURT: I read it and you are right,
12 Judge Ort's decision is on a Huntley hearing, finding
13 of facts with respect to a Huntley hearing.

14 What does that have to do with evidentiary
15 rulings by the trial judge? He is saying certain
16 things and he is making findings and conclusions of law
17 based upon those findings.

18 With respect to the other part, you have an
19 absolute right to cross-examine, which you did when you
20 gave me the good faith basis on the record and I let
21 you cross-examine as to each and every one of those
22 alleged criminal acts these people have told you about.

23 Of course, as I said, you're bound by his
24 answer. Now, I read to you what you are allowed to do
25 and I am going to suggest that you read Pavao and that

Proceedings

1 will explain to you what your witnesses can testify to
2 and what they can't.

3 MR. CHAMBERLAIN: All right.

4 THE COURT: Anything else?

5 MR. CHAMBERLAIN: One last thing. Judge,
6 with respect to the possibility of rebuttal, I would
7 like to have either a brief statement or for the court
8 reporter to read back what was stated on the record
9 with respect to a possible rebuttal case.

10 We have two witnesses that were jail house
11 informants that claim that my defendant made a
12 statement. This was a sealed record by Judge Carter.
13 I would like to have that restated on the record at
14 this point or the record read back.

15 MR. BIANCAVILLA: The record is what it is.

16 MR. CHAMBERLAIN: I would like to know.

17 THE COURT: I have no recollection,
18 Mr. Chamberlain.

19 MR. CHAMBERLAIN: Mr. Biancavilla said they
20 would only be used, I believe, on rebuttal of my
21 client's testimony.

22 MR. BIANCAVILLA: That's correct.

23 MR. CHAMBERLAIN: Okay. That's fine. That's
24 all I need. I'll read that case.

25 THE COURT: Yes.

Proceedings

* * *

(Whereupon, the above matter was adjourned to
April 17th, 2002.)

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1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT : PART XIV

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 - against -

5 PAUL SCRIMO,

6

Defendant.

7

8

May 17, 2002

9

262 Old Country Road

Mineola, New York

10

B E F O R E:

11

THE HONORABLE JEFFREY BROWN,
County Court Judge.

12

13

A P P E A R A N C E S:

14

15

(As previously noted.)

16

* * *

17

THE CLERK: Case on trial continued, the People

18

versus Paul Scrimo.

19

You are Paul Scrimo?

20

THE DEFENDANT: Yes.

21

THE CLERK: Mr. Scrimo, you are appearing here

22

with counsel, Mr. Chamberlain?

23

THE DEFENDANT: Yes.

24

THE CLERK: Are the People ready?

25

MR. BIANCAVILLA: Ready.

Proceedings

1 THE CLERK: Defendant and counsel, ready?

2 MR. CHAMBERLAIN: Ready.

3 THE COURT: Bring in the jury.

4 (Whereupon, the sworn jurors entered the
5 courtroom and resumed their respective seats.)

6 THE CLERK: Both sides stipulate the jurors are
7 all present and properly seated?

8 MR. BIANCAVILLA: So stipulated.

9 THE CLERK: Defendant?

10 MR. CHAMBERLAIN: So stipulated.

11 THE COURT: Good morning, ladies and gentlemen.
12 We are ready to continue with the trial.

13 Please ask Mr. Kane to come in.

14 COURT OFFICER: Good morning, sir. Please take
15 the stand. You are reminded you are still under oath,
16 sir.

17 (Whereupon, the witness resumed the witness
18 stand.)

19 THE COURT: You may inquire, Mr. Chamberlain.

20 MR. CHAMBERLAIN: Thank you, Judge.

21 CONTINUED CROSS

22 BY MR. CHAMBERLAIN:

23 Q Good morning, Mr. Kane.

24 A Morning.

25 Q May I ask you, did you drive yourself in today or

People - Kane - Cross

1 were you transported by someone?

2 A Transported.

3 Q By whom?

4 A My father.

5 Q I want to bring you back to the conversation of
6 the interview you were having on the evening of May 2nd
7 with two homicide detectives in the homicide room. I
8 think where we left off was where you were being asked by
9 them about a big bald guy who you indicated was not bald.
10 Do you recall that?

11 A No, I didn't say he was not bald. I said I didn't
12 know a big bald tattooed guy.

13 Q I will show you Defendant's Y for identification,
14 middle of page five.

15 Does that document refresh your recollection as to
16 whether or not you said it was not Paul?

17 A I don't remember saying it wasn't Paul.

18 Q It doesn't refresh your recollection?

19 A No.

20 Q Will you describe what Paul looked like to those
21 detectives at that time?

22 MR. BIANCAVILLA: Objection to the form of the
23 question with respect to it relating to the notes.

24 THE COURT: Just ask the question,
25 Mr. Chamberlain, without reference to the witness

People - Kane - Cross

1 looking at the notes.

2 Q After the question did you know a big bald guy,
3 what, if anything, did you say to the detectives?

4 A No.

5 Q No?

6 A No.

7 Q What?

8 A No.

9 Q What else did you say? Did you say anything about
10 Paul?

11 A No, not that I remember. No.

12 Q Will you look at the notes, please, and see if
13 that refreshes your recollection?

14 A It doesn't refresh my recollection.

15 Q It does not?

16 A No, it doesn't.

17 Q Do you recall telling the detective that Paul was
18 not bald, he had a shaved head?

19 A Can you repeat that?

20 Q Do you recall telling the detectives that Paul was
21 not bald, he had a shaved head?

22 A No, I don't remember saying that?

23 Q Do you recall telling the detectives that Paul was
24 not big?

25 A No, I don't remember saying that.

People - Kane - Cross

1 Q Would you look at the notes, please.

2 A I am looking at the notes.

3 Q Right in the middle of the page?

4 A Yes, I don't remember saying that, no.

5 Q You don't remember saying that now?

6 A Yes, I don't remember saying that.

7 Q You don't say you didn't say it?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: I haven't heard the question yet
10 but --

11 Q You don't deny saying it then, you just don't
12 recall it now, is that your testimony?

13 MR. BIANCAVILLA: Objection.

14 THE COURT: It's a compound question,
15 Mr. Chamberlain.

16 Sustained.

17 MR. CHAMBERLAIN: May I have the document,
18 please?

19 Q Do you recall telling the detectives, I don't
20 think of Paul as a big bald guy?

21 A I don't remember saying that, no.

22 Q But you don't deny saying that?

23 A I don't deny saying it. I don't remember saying
24 that.

25 Q Is that true, Paul was not a big bald guy but a

People - Kane - Cross

1 guy with a shaved head, is that it?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained as to is it true.

4 Q Did you tell the detectives you hardly ever see
5 him except for darts?

6 A Yes, I believe so.

7 Q And did you tell them anything else about
8 Mr. Scrimo?

9 A Not that I remember, no.

10 Q Did you tell them that he was in his forties?

11 A I don't remember saying that now.

12 Q Do you remember telling them he was a custodian?

13 A No, I don't remember telling them that.

14 Q That he was married with kids?

15 A I don't recall saying that, no.

16 Q Does Defendant's Y refresh your recollection as to
17 any of those items?

18 A Where am I looking?

19 THE COURT: Please refer the witness.

20 THE WITNESS: I got it.

21 Q It's the same page. It's exactly right under the
22 other portion you just read from, toward the bottom of
23 page five.

24 A I see it.

25 Q Do you remember saying that?

People - Kane - Cross

1 A No. No. I don't deny saying it, but I don't
2 remember saying it.

3 Q Those statements that you just related were true
4 as far as you knew; right?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained.

7 Q At the time you were talking to those detectives,
8 were those statements consistent with what you knew about
9 Mr. Scrimo?

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Sustained.

12 Q Do you remember telling the detectives he was not
13 big, he was short, he was -- just a shaved head, not a
14 bald head?

15 MR. BIANCAVILLA: Objection. We have been
16 through this three times already.

17 THE COURT: No, I'll permit it.

18 A Can you repeat that, please?

19 Q Do you remember telling the detectives that Paul
20 was not big, that he was short, just shaved, he did not
21 have a bald head?

22 A I don't recall saying that.

23 Q Do you remember telling them that with reference
24 to playing darts two to three weeks prior to when you were
25 seeing him on May 2nd was the first time he had shaved his

People - Kane - Cross

1 head?

2 MR. BIANCAVILLA: Objection to the form of the
3 question, Judge.

4 THE COURT: Do you understand the question?

5 THE WITNESS: No, I don't.

6 THE COURT: Repeat the question.

7 Sustained as to form.

8 Q You were asked, were you not, about an incident of
9 what you were doing two to three weeks prior to the time
10 you were being interviewed on May 2nd, do you recall that?

11 A Do I recall being asked about two week before?

12 Q Two to three weeks before?

13 A Could I remember what?

14 Q Do you remember being asked about that by the
15 detectives?

16 A No, I don't.

17 Q Do you remember telling the detectives that was
18 the first time he had a shaved head?

19 A No, I don't recall that.

20 Q Do you recall being asked about Tuesday night at
21 darts about three weeks ago?

22 A No, I don't remember that.

23 Q Do you remember telling the detective that you
24 played darts three weeks ago with Scrimo, had a number of
25 drinks and then went to Granny's?

People - Kane - Cross

1 A Right.

2 Q Do you remember that?

3 A On -- on what date was that?

4 Q Three, about three weeks prior to the time of your
5 being questioned?

6 A When was I questioned?

7 Q May 2nd, 2000.

8 A Yes.

9 Q Do you remember telling them then you're not sure
10 what Paul was -- if he was drinking but you then went to
11 Granny's?

12 A Correct.

13 Q Do you remember telling who you thought was there?

14 A Who I thought was at Granny's?

15 Q Did you tell the detectives then that you weren't
16 sure whether Ruth was there?

17 A No. I told him about introducing Paul to the
18 bartender.

19 Q What about Ruth, do you recall telling the
20 detectives whether or not Ruth was at Granny's?

21 A No, she wasn't there.

22 Q Did you tell them what time you left Granny's
23 possibly?

24 A I stayed about an hour.

25 Q And did you tell them where you went then?

People - Kane - Cross

1 A Yes.

2 Q Did you tell them where you went to -- did you say
3 Y.L. Childs?

4 A Yes.

5 Q Did you tell them where you went to in Y.L.
6 Childs?

7 A Correct.

8 Q At that point you were still denying any
9 involvement or presence at the scene of this murder, were
10 you not?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Read the last question back.

13 (Whereupon, the court reporter read back the
14 requested question.)

15 THE COURT: I'll permit that.

16 A No. I think I was telling them the story about
17 what happened.

18 Q I show you page six of Defendant's Y for
19 identification and ask you to read page six and then page
20 seven and see if that refreshes your recollection as to
21 whether you recall telling them what you say happened?

22 A I don't understand these notes at all. It's a
23 bunch of gibberish. I don't understand this.

24 Q You don't understand page seven? Is that a bunch
25 of gibberish?

People - Kane - Cross

1 A I don't understand either page.

2 Q Well, page six contains --

3 MR. BIANCAVILLA: Objection. They are not his
4 notes.

5 THE COURT: Sustained.

6 Q You were being questioned about where you went
7 that night; right?

8 A Correct.

9 Q And up until -- withdrawn.

10 Do you recall a time during that questioning when
11 you were told that we have evidence, we've talked to
12 people, we have evidence that you were there, we have
13 evidence that you were at the scene of the murder; do you
14 recall that?

15 A Do I recall the police saying they have evidence
16 of me being there?

17 Q Yes.

18 A I don't recall that. I'm sure they said it but I
19 don't recall it.

20 Q Do you recall being told -- do you recall the --
21 let's see the page.

22 Do you recall being told that they had evidence
23 from the CSSU?

24 A No.

25 Q Do you recall being told that they had evidence

People - Kane - Cross

1 from the Crime Scene Search Unit proving you were there?

2 A No, I didn't recall that.

3 Q Would you believe that they told you that?

4 A I'm sure they did.

5 Q At that point, Mr. Kane, did you tell them
6 something different than what you had been telling them
7 previously?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained as to form.

10 Q After you were told that they had some evidence
11 tying you to the scene, was that -- what did you tell them
12 at that point?

13 A I told them everything. I told them the full
14 story.

15 Q You told them the full story. That was a story
16 that you had told for the first time, is that correct, at
17 that point?

18 A Correct.

19 Q That was the story that was over three week after
20 the incident; right?

21 A Correct.

22 Q That was the story --

23 MR. BIANCAVILLA: Judge --

24 Q -- all that time --

25 MR. BIANCAVILLA: Objection.

People - Kane - Cross

1 THE COURT: I haven't heard the question yet.

2 Q That was the story that you had all that time to
3 make up after telling other stories?

4 MR. BIANCAVILLA: Objection.

5 THE COURT: Sustained.

6 Q Did you tell them the story or did you tell them
7 that you were drinking and it was hard to remember?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: I don't understand the question.
10 Sustained.

11 Q Did you tell them after that you were drinking and
12 it was hard -- you were not sure of what was going on or
13 it was hard to remember?

14 A I don't recall saying that, no.

15 Q Middle of page seven?

16 MR. BIANCAVILLA: I am going to ask to approach.

17 THE COURT: Mr. Kane, step down.

18 (Whereupon, the following took place at the
19 bench outside the hearing of the jurors and
20 defendant.)

21 THE COURT: Yes, Mr. Biancavilla?

22 MR. BIANCAVILLA: My objection is, and you keep
23 letting him do this, there's been no foundation laid
24 for showing this witness Detective Parpan's notes.

25 The proper foundation for refreshing someone's

People - Kane - Cross

1 recollection is as follows. If the witness answers
2 the question I don't recall, the next question is, is
3 there something that would refresh your recollection,
4 yes or no. Then the question is what is it? If he
5 says Detective Parpan's notes, then he can show him
6 Detective Parpan's notes.

7 You can't just throw a document at somebody and
8 say look at these notes and do they refresh your
9 recollection. They are not his notes, Judge.

10 THE COURT: Mr. Chamberlain?

11 MR. CHAMBERLAIN: Judge, this witness has
12 repeatedly indicated he doesn't recall. This -- these
13 questions are all asked in good faith and
14 Mr. Biancavilla knows it because he has a transcript.
15 I am following the exact transcript.

16 THE COURT: I don't doubt the good faith aspect.
17 That's not his objection.

18 MR. CHAMBERLAIN: My comment here is I am
19 entitled to ask this witness about prior statements.

20 THE COURT: Yes, you are.

21 MR. CHAMBERLAIN: I am entitled to show that he
22 didn't readily admit this thing, how it came out.

23 THE COURT: Yes, you are.

24 MR. CHAMBERLAIN: He has said patently he doesn't
25 recall. I am entitled to go through -- and the notes

People - Kane - Cross

1 say, hard to remember, drinking, not sure of times,
2 conversations, etcetera.

3 THE COURT: Mr. Chamberlain, I agree a hundred
4 percent. The DA's objection is that you are
5 improperly using the document without laying a
6 foundation in order to refresh his recollection.

7 I will permit you to use -- I think I've even
8 said you can use a baloney sandwich to refresh a
9 witness' recollection as long as a proper foundation
10 has been laid. If the witness answers I don't
11 recall, I will permit you to show him Defendant's
12 Exhibit Y --

13 MR. BIANCAVILLA: That's not the proper
14 foundation. If he says he can't recall, the next
15 question is, is there something that would refresh his
16 recollection.

17 THE COURT: How does he know that?

18 MR. CHAMBERLAIN: He will know? These are not
19 his notes, Judge.

20 THE COURT: Based on one of his answers about six
21 times ago, I doubt the notes will refresh his
22 recollection at this point. He just said it was
23 gibberish.

24 MR. CHAMBERLAIN: A foundation was laid
25 yesterday. We went over these notes page by page, and

People - Kane - Cross

1 they will refresh his recollection, all of a sudden,
2 they are not.

3 I am entitled to ask him.

4 THE COURT: I'm not doubting that you are allowed
5 to attempt to refresh his recollection. He has
6 already told us on the record it's gibberish. Perhaps
7 you are showing him something else in the notes that
8 is not refreshing his recollection. I will permit him
9 to ask the question if Defendant's Y for
10 identification will refresh his recollection. If he
11 says no, you are bound by it and that's it.

12 MR. CHAMBERLAIN: I went through that yesterday,
13 Judge.

14 THE COURT: You have to do it with respect to
15 each and every question because there may be something
16 that this document may refresh his recollection with
17 respect to and maybe something that the document will
18 not refresh his recollection to.

19 MR. CHAMBERLAIN: With respect to the last thing
20 he just said, he didn't recall. I've showed him what
21 we have been showing him to see if it refreshes his
22 recollection.

23 These interruptions are destructive of effective
24 cross-examination. Mr. Biancavilla knows it. The
25 jury is unhappy with these interruptions.

People - Kane - Cross

1 THE COURT: Mr. Chamberlain, I have already
2 advised the jury to disregard colloquy and objections
3 because they are not in evidence.

4 MR. CHAMBERLAIN: The People's case is based on
5 this witness and he's interrupting cross and it is a
6 completely disingenuous way of doing it.

7 THE COURT: Mr. Chamberlain, if you ask a proper
8 question, Mr. Biancavilla would not be able to object.
9 That seems to be the problem during the course of this
10 trial. Now --

11 MR. CHAMBERLAIN: I'll ask it again.

12 THE COURT: I will permit you to ask it properly
13 and I told you how to do it.

14 MR. CHAMBERLAIN: My recollection, maybe I'm
15 wrong, but I'm almost sure he had just said I don't
16 recall and I showed him them. Isn't that the proper
17 way?

18 THE COURT: I said you can do it.

19 MR. CHAMBERLAIN: Then why are we here if in fact
20 that's what happened.

21 THE COURT: Excuse me. Why are we here? Because
22 the People objected, which they are entitled to do,
23 and he had a right to let out his objection as to the
24 foundation aspect.

25 I ruled that I will permit you, and I am not

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1 going to require that additional step that the People
2 are asking for. I said to you that you can present
3 the document to him, ask him if this document
4 refreshes his recollection as to the particular point
5 you are trying to bring up. If it doesn't, that's
6 the end of it.

7 MR. CHAMBERLAIN: I'll do it all over, Judge.

8 THE COURT: You have to do it for each question,
9 Mr. Chamberlain, no way around that.

10 MR. CHAMBERLAIN: Fine.

11 (Whereupon, the following took place in open
12 court.)

13 CONTINUED CROSS

14 BY MR. CHAMBERLAIN:

15 Q Mr. Kane, I would like to redirect your attention
16 back to the portion of the interview between you and
17 Detectives McHugh and another homicide detective on the
18 evening of May 2nd. Right after you were told that they
19 had evidence connecting you to the scene of the murder, do
20 you recall whether or not you said I can't remember, I was
21 drinking, I am not sure of the time, conversation or what
22 happened?

23 A I don't recall saying that.

24 Q You don't recall saying that.

25 I show you Defendant's Exhibit Y, page six, and

People - Kane - Cross

1 ask you if that refreshes your recollection as to whether
2 or not you said --

3 A This is the same thing you showed me before.

4 THE COURT: Does it refresh your recollection?

5 A No, it doesn't.

6 Q Do you deny saying I don't remember?

7 MR. BIANCAVILLA: Objection.

8 THE COURT: Sustained.

9 MR. CHAMBERLAIN: May I have the notes back?

10 Just one minute, Judge.

11 THE COURT: Yes, of course, Mr. Chamberlain.

12 Q Now, Mr. Kane, do you recall being asked by the
13 detectives whether or not Ruth was coming on to you or --
14 at the bar earlier at Y.L. Childs?

15 A If the police asked me is that?

16 Q Yes.

17 A Do I remember them asking me that, yes.

18 Q What did you tell them?

19 A I told them yes.

20 Q Did you tell them that she was -- whether she was
21 kissing anybody, Scrimo or yourself?

22 A Did they ask me that? I told them that.

23 Q What did you tell them? Was she kissing Scrimo or
24 kissing you?

25 A Me.

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1 Q And she was coming on to you; is that correct?

2 A Correct.

3 Q Did you tell the detective why she was --
4 withdrawn.

5 Did you tell the detectives when you went to the
6 back door -- what you related that night, you went to the
7 back door of Ruth's apartment; is that correct?

8 A Correct.

9 Q Was the back door open?

10 A It was unlocked.

11 Q It was unlocked. Now, you then walked up the
12 stairs with Scrimo, according to your story?

13 A Correct.

14 Q You then walked up those stairs and down a long
15 hall to the back apartment?

16 A Correct.

17 Q You then were let in the back door by Ruth; is
18 that correct?

19 A After knocking, yes.

20 Q Did Ruth at any time go out with you or go out of
21 that back door at that time?

22 A Did she ever go out of the back door?

23 Q Yes.

24 A Not that I know of.

25 Q Not that you know of. Now, you were asked

People - Kane - Cross

1 after -- after this statement, and I'm going to get back
2 to what you claim happened in the apartment, but after
3 this, you then had a interview with Mr. Dempsey, did you
4 not?

5 A I had an interview with him, yes.

6 Q Was that on May 5th?

7 A I am not sure of the date.

8 Q Did you have another interview with him on
9 May 10th?

10 A I'm not sure of the date.

11 Q Did you then have another interview with him on
12 May 25th prior to a felony exam?

13 A Yes.

14 Q Did you then have another interview with him on
15 July 2nd prior to testifying before the grand jury?

16 A Yes.

17 Q Did you discuss the question about where you --
18 where Ruth had been during this encounter in the apartment
19 according to what you told the detective?

20 A Can you repeat that?

21 Q Was there any question raised as to where Ruth was
22 during that encounter?

23 A During what encounter?

24 Q During the encounter you related as to what
25 happened in the apartment?

People - Kane - Cross

1 MR. BIANCAVILLA: I am objecting to the form of
2 the question.

3 THE COURT: Yes, Mr. Chamberlain.

4 Q You told this jury here --

5 MR. BIANCAVILLA: Judge, I object to the
6 beginning of that question.

7 THE COURT: You haven't heard the rest of the
8 question.

9 MR. BIANCAVILLA: The objectionable portion is
10 the beginning, Judge.

11 THE COURT: You are talking about that he
12 testified here.

13 Q You told this jury here, as to an encounter that
14 took place in the apartment after you went upstairs; is
15 that correct?

16 MR. BIANCAVILLA: Objection.

17 THE COURT: I don't understand that question,
18 Mr. Chamberlain.

19 Q Did you tell jury that after you went in almost
20 immediately Paul went out to get some beer?

21 A Not immediately, but after a brief conversation.

22 Q Like a minute or two?

23 A Correct.

24 Q And then Ruth was there during that conversation;
25 right?

People - Kane - Cross

1 A Correct.

2 Q Then you told the jury that you went -- first you
3 told the jury that Paul was gone for about how long?

4 MR. BIANCAVILLA: Objection.

5 Q How long was he gone for during that period?

6 THE COURT: I will permit that.

7 A About 10 minutes.

8 Q During that 10 minutes you had a -- withdrawn.

9 Ruth performed oral sex on you; is that correct?

10 A Correct.

11 Q Would you tell the jury how she performed oral sex
12 on you?

13 A She got down on her knees between my legs and
14 performed oral sex.

15 Q Did she -- did you get undressed?

16 A No.

17 Q Did you take your pants off?

18 A No.

19 Q You just lowered your pants?

20 A Correct.

21 Q Where were you when this happened?

22 A I was sitting in the kitchen.

23 Q You were sitting in the kitchen?

24 A Correct.

25 Q You were sitting on a chair?

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1 A Correct.

2 Q Did you tell the jury that during this performance
3 she was stroking or -- your behind?

4 MR. BIANCAVILLA: I object to the form of the
5 question.

6 THE COURT: Sustained as to form.

7 Q Is that what happened, she was running her hands
8 over --

9 A Stroking my back, stroking my ass, yes.

10 Q Stroking your ass while you were seated?

11 A Correct.

12 Q Did she scratch you during that encounter?

13 A Not to my knowledge.

14 Q Well, wouldn't you know if you had been scratched?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained.

17 Q Did you ever testify that she had one hand on your
18 organ?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained, form.

21 Q Did she have one hand on your organ?

22 A Correct.

23 Q She didn't scratch there; right?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: I'll permit that.

People - Kane - Cross

1 A No.

2 Q When she was stroking your back, you felt no
3 scratches; is that correct?

4 A She was caressing me. She was, like, you know --
5 I didn't feel no scratch.

6 Q How was she caressing your back side, your ass, as
7 you put it, while you were seated on a chair?

8 A Like this (demonstrating).

9 Q Were you standing up at that time?

10 A No.

11 Q How long did that encounter take place, that
12 sexual act take place?

13 A Seven minutes.

14 Q Seven minutes?

15 A He was gone ten. I asked her to stop because I
16 knew Paul would be coming back.

17 Q When you asked her to stop, you got up and you did
18 what, you went in to put on a CD?

19 A Correct.

20 Q Was it an Allman Brothers CD; is that what you
21 said?

22 A Allman Brothers, yes.

23 Q Did Ruth leave the apartment at that point?

24 A Not to my knowledge.

25 Q Well, she hadn't been downstairs when you first

People - Kane - Cross

1 came in; right?

2 A Correct.

3 Q She hadn't been any place with Scrimo prior to
4 that point, right, alone?

5 A No. Well, when I came back from putting on the
6 CD, Paul was in the apartment and so was Ruth, in the
7 kitchen.

8 Q I see. When you came back from putting on -- did
9 you say CD?

10 A The CD.

11 Q When you came back from putting on the CD, Paul
12 was in the apartment, and so was Ruth, in the kitchen?

13 A Correct.

14 Q You signed a statement on May 2nd after your
15 interview with the detective?

16 A Correct.

17 Q Did you tell the detective that you went into the
18 living room and put on an Allman Brothers CD in the
19 player, I went back into the kitchen and Paul came back
20 with a 12 pack of Budweiser bottles?

21 A Correct.

22 Q So you were in the kitchen and then Paul came
23 back; is that correct?

24 A No.

25 Q Well, did you -- do you recall being asked by a

People - Kane - Cross

1 juror --

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained.

4 Q Mr. Kane, did you ever see Ruth leave the
5 apartment?

6 A No.

7 Q Was there any reason you knew of for her to leave
8 the apartment?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q Had there been any discussion about her going
12 anywhere when you went in to put that CD in the machine?

13 A No.

14 Q Were you asked these questions and did you give
15 these answers as to where Ruth was at the time that you
16 went in to put in the CD?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained as to form.

19 Q Mr. Kane, as you sit here, you don't recall where
20 Ruth was when you went in to put the CD --

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained as to form.

23 Q Do you recall, Mr. Kane, where Ruth was when you
24 went in to put the CD in the --

25 MR. BIANCAVILLA: Objection.

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1 THE COURT: I'll permit that.

2 A Can you repeat that, please?

3 Q Do you recall where Ruth was when you went in to
4 put the CD into the player?

5 A When I left the kitchen to go put the CD in she
6 was in the kitchen.

7 Q Was she there the whole time, do you recall?

8 A I don't know. I was in the living room looking
9 through the CDs.

10 Q Were you asked about that in the grand jury
11 July 7th?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained.

14 Q Were you asked -- were you aware of various times
15 and what occurred on those times -- were you clear on
16 where people were and what occurred in that apartment?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Q Do you recall the -- can you tell us a time
20 sequence as to where you were or where Ruth was during the
21 10 minutes that Scrimo was gone?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: That's kind of ambiguous,

24 Mr. Chamberlain. I'll let you ask the time-frame but
25 I think you should be more specific.

People - Kane - Cross

1 Q Can you give us specifics as to where you were and
2 where she was during that time period?

3 A In the kitchen.

4 Q You're saying you knew exactly where you were the
5 whole time and exactly where she was?

6 MR. BIANCAVILLA: Objection.

7 A No.

8 THE COURT: I'll let it stand.

9 Q Do you recall page 91 of the grand jury minutes --

10 MR. BIANCAVILLA: Objection.

11 Q -- line 20?

12 THE COURT: I don't have a copy.

13 MR. BIANCAVILLA: Objection. Improper
14 foundation.

15 MR. CHAMBERLAIN: I object to the objection. I
16 haven't asked a question.

17 THE COURT: Excuse me. Excuse me. There's a
18 proper way of doing it, Mr. Chamberlain.

19 MR. CHAMBERLAIN: Pardon me.

20 THE COURT: There's a proper way. Go ahead. I
21 want to hear the question.

22 Q Page 91, line 20 of the grand jury minutes, the
23 foreperson, do you remember -- with reference to --

24 THE COURT: Just ask the question and answer,
25 Mr. Chamberlain, the proper way.

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1 MR. BIANCAVILLA: Excuse me, Judge. Can we have
2 a specific date?

3 MR. CHAMBERLAIN: What?

4 THE COURT: Excuse me.

5 MR. BIANCAVILLA: Can we have a specific date
6 that testimony occurred.

7 MR. CHAMBERLAIN: July 6, 2000.

8 MR. BIANCAVILLA: Thank you.

9 Q The foreperson --

10 MR. BIANCAVILLA: One moment, Mr. Chamberlain.
11 May I have a line, please?

12 MR. CHAMBERLAIN: Line 20, Mr. Biancavilla.

13 MR. BIANCAVILLA: Thank you, Mr. Chamberlain.

14 Page 91?

15 MR. CHAMBERLAIN: Page 91.

16 Q The foreperson --

17 MR. BIANCAVILLA: Mr. Chamberlain, excuse me.

18 Your Honor, I need a moment.

19 THE COURT: Mr. Chamberlain, give him a moment.
20 He needs to find the page in the grand jury minutes.

21 MR. BIANCAVILLA: There was more than one date,
22 Judge. That's the problem.

23 MR. CHAMBERLAIN: Did you say something,
24 Mr. Biancavilla, there was more than one date?

25 MR. BIANCAVILLA: Yes.

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1 THE COURT: Excuse me. No colloquy. Just give
2 Mr. Biancavilla a moment to find the grand jury
3 minutes.

4 MR. CHAMBERLAIN: Judge, I only have one date.
5 That's why I am curious.

6 MR. BIANCAVILLA: For Mr. Kane, there was only
7 one date but there was more than one date for the
8 presentation.

9 MR. CHAMBERLAIN: I am talking about this
10 witness.

11 THE COURT: Let's not have colloquy.

12 MR. BIANCAVILLA: Judge, I am going to object.

13 THE COURT: Can somebody please provide me with a
14 copy of grand jury testimony?

15 MR. BIANCAVILLA: Here, Judge.

16 Judge, there should have been a copy in the
17 court file from when the court originally examined
18 it.

19 THE COURT: I don't have it, unless Judge Ort has
20 it.

21 Let's continue. There's nothing at this point
22 to overrule.

23 MR. CHAMBERLAIN: Thank you, Judge.

24 THE COURT: Ask the question, Mr. Chamberlain.

25 Q Do you remember being asked this question giving

People - Kane - Cross

1 this answer, the foreperson --

2 THE COURT: Excuse me. Excuse me.

3 Read back the last question.

4 (Whereupon, the court reporter read back the
5 requested question.)

6 THE COURT: Sustained.

7 Q Mr. Kane, were you blurry on time as to when
8 people came and when things happened in that apartment?

9 A Yeah, on the exact time.

10 Q Were you blurry on what time different things
11 happened in the apartment?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained as to form.

14 Q Do you remember what time the events that you have
15 testified to here took place in that apartment?

16 MR. BIANCAVILLA: Objection.

17 THE COURT: You have to be more specific,
18 Mr. Chamberlain. It's too ambiguous, the question.

19 Sustained.

20 Q Did you -- were you aware of where Paul Scrimo
21 was, according to your testimony, when you were at the CD
22 player?

23 MR. BIANCAVILLA: Objection, form of the
24 question, Judge.

25 THE COURT: I'll permit that.

People - Kane - Cross

1 A Can you repeat that, please?

2 MR. CHAMBERLAIN: May we have it read back?

3 THE COURT: Were you aware -- read back the
4 question.

5 (Whereupon, the court reporter read back the
6 requested question.)

7 A He left to go to 7-Eleven to get beers and he was
8 on his way back, I assume. That's why I stopped the
9 sexual encounter and put the music on.

10 Q You then went back into the kitchen after that;
11 right?

12 A Correct.

13 Q And then he came back; right?

14 A No. I went back into the kitchen, Scrimo was in
15 the kitchen.

16 Q So you were clear on that; is that it?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: Sustained.

19 Q You were clear on that?

20 MR. BIANCAVILLA: Objection.

21 THE COURT: Sustained.

22 Q Were you --

23 MR. CHAMBERLAIN: Objection?

24 THE COURT: Clear on that, sustained.

25 Q Mr. Scrimo, you were asked questions in the grand

People - Kane - Cross

1 jury, page 92 --

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Sustained.

4 Q Mr. Kane, you say you're clear on that --

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained.

7 Q Did you ever tell anyone that you were blurry on
8 that exact point?

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained as to form.

11 MR. CHAMBERLAIN: Judge --

12 THE COURT: Yes, Mr. Chamberlain?

13 MR. CHAMBERLAIN: I would like --

14 THE COURT: What would you like to do?

15 Q Would your testimony before the grand jury on
16 July 6th refresh your recollection on that point?

17 MR. BIANCAVILLA: Objection.

18 THE COURT: You first have to ask a question and
19 make it clear, Mr. Chamberlain. Then he has to tell
20 us he needs his recollection refreshed, if he doesn't
21 recall.

22 Q You say that you recall and were clear on where
23 you were when he came back; right?

24 MR. BIANCAVILLA: Objection.

25 THE COURT: Sustained as to form.

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1 MR. CHAMBERLAIN: Judge, I think I am entitled to
2 cross-examine.

3 THE COURT: You certainly are but you have to ask
4 a proper question.

5 Q Did you ever tell the grand jury --

6 THE COURT: Sustained. You can't ask it that
7 way.

8 Q Let me show you the transcript --

9 MR. BIANCAVILLA: Objection.

10 THE COURT: Sustained.

11 Q Can you tell us -- do you recall where Ruth was
12 when Paul came back with the beer?

13 A I wasn't present. I was in the living room.

14 Q You were in the living room and where was Ruth?

15 A To the best of my knowledge, she was in the
16 kitchen. I couldn't see from the living room.

17 Q Were you asked about a time sequence when you
18 testified before the grand jury?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q Did you tell the detectives that the defendant
22 brought back Budweiser beer?

23 A Correct.

24 Q Not Coors Light, not Coors beer?

25 A Not Coors beer.

People - Kane - Cross

1 Q And there was a beer bottle, Budweiser beer bottle
2 on the table, were you aware of that?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: You can ask the question but
5 sustained as to form.

6 Q When you left the apartment, was there a Budweiser
7 bottle left on the table?

8 A I don't remember.

9 Q Well, did you tell us that you cleared up the beer
10 bottles, put them in the case?

11 A Yes.

12 Q Were those Budweiser bottles or Coors Light?

13 A I don't recall.

14 Q Mr. Kane, when you indicated that the defendant
15 went at Ruth, she was standing, according to you, between
16 the kitchen and the bedroom?

17 A Correct.

18 Q Did she -- did he knock her right down?

19 A In the hall -- in the doorway opening into the
20 bedroom.

21 Q Did she fall against the bed?

22 A She fell down to the ground.

23 Q Right to the ground. Did he hit her with
24 anything?

25 A Excuse me?

People - Kane - Cross

1 Q Did he hit her with anything?

2 A No.

3 Q Did you tell us that -- withdrawn.

4 Was he bent over her or was he kneeling down on
5 top of her?

6 A He was on top of her.

7 THE COURT: Counsel, I think we need to take a
8 break for a moment.

9 Do not discuss the case amongst yourselves or
10 with anyone else. Keep an open mind. Do not form or
11 express any opinions until the entire case has been
12 completed.

13 Do not read or listen to any accounts of the
14 case should they be reported in the media. Do not
15 visit or view any place or premises that have been
16 mentioned.

17 You are not to permit any party to discuss the
18 case with you or attempt to influence you, and you
19 must promptly report to the Court any violation
20 thereof.

21 Please follow the court officers

22 (Whereupon, the sworn jurors exited the
23 courtroom.)

24 THE COURT: Mr. Kane, please do not discuss the
25 case with anybody. You may step down.

People - Kane - Cross

1 (Whereupon, a brief recess was taken.)

2 COURT OFFICER: Jury entering.

3 (Whereupon, the sworn jurors entered the
4 courtroom and resumed their respective seats.)

5 THE CLERK: The jury is present.

6 THE COURT: Bring in the witness, please.

7 (Whereupon, the witness resumed the witness
8 stand.)

9 COURT OFFICER: You are reminded, sir, you are
10 still under oath.

11 THE COURT: Mr. Chamberlain?

12 MR. CHAMBERLAIN: Thank you, Judge.

13 CONTINUED CROSS

14 BY MR. CHAMBERLAIN:

15 Q I want to direct your attention, Mr. Kane, back to
16 the statement about a Budweiser beer bottle. You said you
17 told the detectives -- when you left the apartment that
18 night, were you aware of any bottle being left on the
19 table?

20 A No.

21 Q During your questioning of the detective -- by the
22 detective, was there a mention to you that there had been
23 a Budweiser beer bottle found there?

24 A No.

25 Q You don't recall that?

People - Kane - Cross

1 A I don't recall.

2 Q The statement that you signed for them was that
3 Paul had brought back Budweiser?

4 MR. BIANCAVILLA: Objection.

5 THE COURT: Sustained.

6 Q Is that what you told them, he brought back
7 Budweiser beer, bottles; correct?

8 A Yes.

9 Q Mr. Scrimo, we were at a point where you said that
10 the defendant was down over the victim strangling her; is
11 that correct?

12 A Excuse me?

13 MR. BIANCAVILLA: Objection to the form of the
14 question, Judge.

15 THE COURT: Sustained.

16 MR. CHAMBERLAIN: I'll withdraw it.

17 THE COURT: Rephrase, Mr. Chamberlain.

18 Q Going back to just before the break, you had
19 indicated the defendant was kneeling over the victim, do
20 you recall that?

21 A No. I said he was on her.

22 Q He was on her?

23 A Yeah, on top of her.

24 Q Kneeling on top of her?

25 A I didn't say that. I said he was on top of her.

People - Kane - Cross

1 Q Was he kneeling on top of her?

2 A His knees were on the ground and she was between
3 his legs and he was on top of her strangling her.

4 Q And he was strangling her?

5 A Correct.

6 Q And you were clearly aware he was strangling her
7 at that time?

8 A At which time?

9 Q When he was on top of her?

10 A When I went over to pull him off, that's when I
11 realized he was strangling her.

12 Q Did you realize -- did you try to pull him off
13 before you realized it or after you realized it?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: I'll permit it.

16 A I ran over, grabbed him by the shoulder and
17 realized he was strangling her.

18 Q You grabbed him by the shoulder and then you
19 realized he was strangling her; is that your testimony?

20 A Correct.

21 Q What did you do when you realized he was
22 strangling her?

23 A That's when I said, What the fuck, man? What the
24 fuck? What are you doing.

25 Q I didn't ask what you said. I asked what you did,

People - Kane - Cross

1 sir?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: No argument.

4 Q What did you do when you realized he was
5 strangling her?

6 A I spoke --

7 Q What?

8 A I spoke.

9 Q You spoke. Other than speaking, what did you do?

10 MR. BIANCAVILLA: Judge, I am going to ask that
11 the defendant be directed not to make comments while
12 the witness is testifying.

13 THE COURT: Yes, I don't want any noise,
14 Mr. Scrimo.

15 THE DEFENDANT: It's my throat, your Honor.

16 MR. CHAMBERLAIN: I apologize, your Honor.

17 Q What did you do, Mr. Kane? Physically, what did
18 you do?

19 A I got -- after I tried pulling him off --

20 Q You tried pulling him off before?

21 A Right.

22 Q You realized he was strangling her. When you
23 realized he was strangling her, what did you do?

24 A I stood up and started backing away.

25 Q You backed away. And then you say, when you

People - Kane - Cross

1 backed away, he got up -- during the time -- after you
2 backed away, did you do anything else with respect to what
3 was going on?

4 A Physically?

5 Q Did you do anything else?

6 A No.

7 Q Did you try to make a phone call?

8 A No.

9 Q To your knowledge, the phone in the apartment was
10 still working, was it not?

11 MR. BIANCAVILLA: Objection.

12 MR. CHAMBERLAIN: Withdrawn.

13 Q Did you have a phone with you, by any chance?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: I'll permit that.

16 A No.

17 Q How long did this strangling go on after you
18 backed away?

19 A It's hard to say, minute or two.

20 Q You are kind of blurry on time?

21 MR. BIANCAVILLA: Objection to the
22 characterization, Judge.

23 THE COURT: Yes. Sustained.

24 Q Did you tell the grand jury that you were blurry
25 on time?

People - Kane - Cross

1 MR. BIANCAVILLA: Objection.

2 THE COURT: Sustained. That's not proper.

3 Q Are you blurry on times with respect to what
4 happened in that apartment?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: The word blurry, Mr. Chamberlain?

7 MR. CHAMBERLAIN: It's the word he used, Judge.

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained.

10 Q Well, are you uncertain as to -- were you
11 uncertainty as to times as to what things had happened in
12 that apartment?

13 A As far as what?

14 Q As far as how long anything took place, as far as
15 what was going on?

16 A It's hard to gauge when you're in that situation.

17 Q I didn't ask you that?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: Sustained.

20 Don't argue with the witness. Just ask him a
21 question, Mr. Chamberlain.

22 Q Now, you backed up. You can't tell us exactly how
23 long this strangling took place --

24 MR. BIANCAVILLA: Objection. He's testifying.

25 MR. CHAMBERLAIN: No, I am not.

People - Kane - Cross

1 THE COURT: Sustained.

2 MR. CHAMBERLAIN: Withdrawn.

3 Q After -- well, whatever length of time it went on,
4 what did you do? Did you do anything?

5 A I -- while he was strangling her, no. I backed up
6 into the kitchen and screamed to him --

7 Q That was --

8 THE COURT: Mr. Chamberlain, he wasn't finished
9 with his response.

10 A And I screamed at him, What the fuck are you
11 doing? What are you doing.

12 Q You screamed at him. That was -- she was
13 partially -- she was right in the doorway between the
14 kitchen and the bedroom, was she not?

15 A Correct.

16 Q That apartment is bathroom, kitchen, bedroom,
17 living room; right?

18 A Correct.

19 Q In that order. And when you -- other than what
20 you said, did you do anything is the question?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained as to form.

23 Q During the period of time that he was strangling
24 her, did you do anything, sir?

25 MR. BIANCAVILLA: Objection.

People - Kane - Cross

1 MR. CHAMBERLAIN: What is the basis of that
2 objection.

3 THE COURT: Excuse me. Excuse me.

4 MR. CHAMBERLAIN: I'm's sorry, Judge.

5 THE COURT: Overruled.

6 A Can you repeat the question.

7 THE COURT: Read back the question for the
8 witness.

9 (Whereupon, the court reporter read back the
10 requested question.)

11 A No. I backed up into the kitchen and screamed at
12 him.

13 Q At some point in time after he was strangling her,
14 he got up and he went someplace; is that your testimony?

15 A Correct.

16 Q You didn't go anywhere; is that right? You just
17 stayed there while he was getting up and going someplace?

18 A He got up and darted out of my sight.

19 Q You didn't go anywhere?

20 A No.

21 Q You didn't do anything?

22 A No.

23 Q He went out of your sight, what did you do when he
24 went out of your sight, sir?

25 A I looked at Ruth.

People - Kane - Cross

1 Q You looked at Ruth?

2 A Ruth was on the floor.

3 Q Did you try to leave the apartment?

4 A No. I was in shock.

5 Q Just answer the question as to what you did. If I
6 ask you a question --

7 MR. BIANCAVILLA: Objection.

8 THE COURT: Mr. Chamberlain, if you want the
9 witness instructed, speak to me.

10 MR. CHAMBERLAIN: I'm sorry, Judge. Please
11 instruct the witness.

12 THE COURT: Is there an objection,
13 Mr. Chamberlain.

14 MR. CHAMBERLAIN: I am asking for instructions to
15 the witness merely to answer the question as to what
16 he did, not any operation of his mind.

17 THE COURT: Yes. Okay.

18 Mr. Kane, just tell us what you observed and
19 what you did.

20 THE WITNESS: Yes.

21 Q I take it the answer is you didn't do anything
22 when Mr. Scrimo went out of sight?

23 A Correct.

24 Q You didn't leave the apartment?

25 A No.

People - Kane - Cross

1 Q You didn't try to get help?

2 A No.

3 Q Did you check to see what was going on? Did you
4 bend down to see what was going on with her?

5 MR. BIANCAVILLA: Objection.

6 THE COURT: Sustained.

7 MR. CHAMBERLAIN: Withdrawn.

8 Q How long was Mr. Scrimo out of your sight?

9 A Seconds.

10 Q You didn't see what he did?

11 A No.

12 Q But he came back with a cord, according to you?

13 A Correct.

14 Q One end in each hand; is that right?

15 A Correct.

16 Q And he then pulled it, I think you demonstrated
17 for the jury here, he stepped behind Ruth?

18 A He --

19 Q Behind her?

20 A He strung it around her neck like this
21 (demonstrating).

22 Q Put it around and pulled up?

23 A And pulled it up like this (demonstrating).

24 MR. BIANCAVILLA: I don't believe the jury can
25 see.

People - Kane - Cross

1 THE COURT: Stand up.

2 MR. CHAMBERLAIN: I'll take my exception to this.

3 THE COURT: Mr. Chamberlain, if you have an
4 objection, there's a word, it's called objection.

5 Have a seat, Mr. Kane.

6 You can do it on redirect.

7 MR. CHAMBERLAIN: Thank you, Judge.

8 Q He pulled up in the manner which you previously
9 showed the jury when you were on direct; is that correct?

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Overruled.

12 A Could you repeat the question, please?

13 THE COURT: Rephrase the question.

14 MR. CHAMBERLAIN: I will withdraw the question,
15 Judge.

16 Q After this act of strangulation, what, if
17 anything, did you do? What did you do?

18 A I listened to what Paul screamed at me.

19 Q You what?

20 A Paul Scrimo at me.

21 Q I didn't ask you that, sir.

22 THE COURT: Excuse me.

23 MR. BIANCAVILLA: Objection.

24 THE COURT: Excuse me. He responded to your
25 question, Mr. Chamberlain, if you didn't hear it.

People - Kane - Cross

1 MR. BIANCAVILLA: I heard Paul screamed at me,
2 Judge, but that's not what I asked?

3 A I listened to Paul.

4 Q I asked what he did.

5 THE COURT: You didn't hear the first part of his
6 response, Mr. Chamberlain.

7 Could you please read it back to Mr. Chamberlain
8 (Whereupon, the court reporter read back the
9 requested testimony.)

10 MR. CHAMBERLAIN: I respectfully submit that's
11 not responsive to what he did, Judge.

12 THE COURT: Overruled.

13 Q Would you tell this jury, physically, what you
14 did, sir, at that point?

15 A After Paul screamed at me?

16 Q All right. After Paul screamed at you.

17 A I went through the bedroom into the living room to
18 shut off the music.

19 Q You went through the bedroom into the living room.
20 What was the purpose of going to the living room?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Read that last question back.

23 (Whereupon, the court reporter read back the
24 requested testimony.)

25 THE COURT: I'll permit that.

People - Kane - Cross

1 A To shut off the music.

2 Q Did you do anything besides shut off the music,
3 sir --

4 A No.

5 Q -- in the living room.

6 Did you wipe down the stereo for fingerprints?

7 A No, I did not.

8 Q Did anybody wipe down the stereo that night? You
9 had touched it. Did anyone wipe it down?

10 A Not to my knowledge.

11 Q Did anybody wipe down any prints in the living
12 room at all?

13 A Not to my knowledge.

14 Q Not to your knowledge. You were there, weren't
15 you?

16 A Yes.

17 Q So the answer is, may have been, but you just
18 didn't know about it?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q Did anybody wipe down any doorways or sills
22 between the living room, the bedroom, the bedroom, the
23 kitchen, the kitchen, the bathroom, in the bathroom?

24 MR. BIANCAVILLA: There's six questions there.

25 MR. CHAMBERLAIN: Six places, one question.

People - Kane - Cross

1 Q Did anybody wipe down those places?

2 THE COURT: You're asking a compound question
3 that can have different answers.

4 Sustained.

5 Q Would you tell this jury what was wiped down at
6 this point, if anything?

7 A Paul was doing the wiping. I don't know.

8 Q Didn't you testify as to wipe --

9 A I seen --

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Sustained.

12 Q Let me backtrack a little bit. When you got,
13 right after the request to get the beers, did you testify
14 here that you reluctantly stepped over the victim; is that
15 your testimony?

16 MR. BIANCAVILLA: Objection.

17 MR. CHAMBERLAIN: Direct testimony yesterday.

18 MR. BIANCAVILLA: Judge, it's completely out of
19 context.

20 MR. CHAMBERLAIN: No, it's not. I don't
21 understand that.

22 THE COURT: I'll permit it.

23 Go ahead.

24 A Can you repeat the question, please?

25 Q Did you testify that you reluctantly stepped over

People - Kane - Cross

1 the victim to go in and turn off the stereo?

2 A Correct.

3 Q And then you proceeded to collect a bunch of beer
4 bottles?

5 A No. I went into the living room.

6 Q And after you turned off the stereo, you then
7 proceeded to collect a bunch of beer bottles?

8 A After Paul instructed me to, yes.

9 Q After Paul instructed you to?

10 A Screamed at me.

11 Q Everything was Paul's way here?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained.

14 Q Paul did everything?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained. Ambiguous.

17 Q Do you recall -- you say Paul told you that you
18 were in this together; is that correct?

19 A Correct, yes.

20 Q As you were leaving, did you believe that you were
21 in this together?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Sustained.

24 Q Did you agree with that statement?

25 MR. BIANCAVILLA: Objection.

People - Kane - Cross

1 THE COURT: Sustained.

2 Q To your knowledge were you in it together?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: Sustained.

5 Q Had you done anything other than what you have
6 told this jury here that evening, sir?

7 A No.

8 Q The cord around the victim's neck, did you see
9 anybody wipe that off?

10 A No.

11 Q Did you see anybody pick up any hairs, fibers in
12 that location?

13 A No.

14 Q Did you see anybody pick up any cigarette butts in
15 that location?

16 A No.

17 Q Did you see anybody do anything other than the
18 wiping down of a table and the door knob and the picking
19 up of beer bottles, anything other than those items?

20 A The chairs.

21 Q What?

22 A The chairs.

23 Q Chairs. Mr. Kane, when the victim was knocked
24 down, she wasn't put on the bed first and then put on the
25 floor, was she or was she --

People - Kane - Cross

1 A No.

2 Q She didn't touch the bed at all?

3 A He knocked her down through the doorway. She --
4 she hit the ground and I guess maybe her back hit the bed,
5 you know, the -- her back went up against the bed.

6 Q Did anybody hit the side of her head?

7 A No.

8 Q Were there any blows to the side in different
9 places to the side of her head deep enough to make impacts
10 deep into the tissue?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Sustained.

13 Q To make internal lacerations?

14 MR. BIANCAVILLA: Objection.

15 THE COURT: Sustained.

16 Q Now, when she was knocked down, was she
17 struggling?

18 A No, it didn't appear that way.

19 Q Didn't appear that way.

20 Did you ever tell anybody that she was fighting
21 back.

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Overruled.

24 A No.

25 Q Going back to your interview, the first time that

People - Kane - Cross

1 there was an interviewer on May 2nd, two homicide
2 detectives --

3 MR. BIANCAVILLA: Objection to the
4 characterization and preamble.

5 MR. CHAMBERLAIN: I'll withdraw and rephrase.

6 THE COURT: Sustained.

7 Q May 2nd, you're being interviewed by two homicide
8 detectives; right?

9 A Correct.

10 Q Do you remember that -- do you recall telling the
11 detective he was choking her and she was trying to fight
12 back?

13 A No. I recall saying at first I thought they were
14 fighting.

15 Q Let me show you page eight of Defendant's Y?

16 MR. BIANCAVILLA: Same objection as before,
17 Judge.

18 THE COURT: Overruled.

19 Q The portion on the page that's underlined,
20 Mr. Kane --

21 THE COURT: What was the question?

22 MR. CHAMBERLAIN: Will you read the question
23 back.

24 THE COURT: There's no question, Mr. Chamberlain.

25 (Whereupon, the court reporter read back the

People - Kane - Cross

1 requested testimony.)

2 THE COURT: Sustained.

3 MR. CHAMBERLAIN: Judge, can I show the Court --

4 THE COURT: Mr. Chamberlain, he didn't indicate
5 that he didn't recall. He didn't indicate he needs
6 his recollection refreshed. He gave a response.

7 MR. CHAMBERLAIN: I am entitled to show
8 inconsistency.

9 MR. BIANCAVILLA: Objection.

10 THE COURT: That's different, Mr. Chamberlain,
11 but not to refresh his recollection.

12 Sustained.

13 Q You testified at a preliminary examination on
14 May 25th, 2000, Mr. Kane --

15 MR. BIANCAVILLA: Objection.

16 THE COURT: I'll permit that.

17 A On May -- May 25th?

18 Q 2000?

19 A What -- what was the question.

20 Q Do you remember testifying under oath in court
21 with respect to this incident?

22 A Yeah. Yes.

23 Q Page seven --

24 THE COURT: Line number?

25 Q Line seven, do you recall being asked these

People - Kane - Cross

1 questions and giving these answers:

2 "QUESTION: What happened when he ran after Ruth?

3 "ANSWER: Well, he grabbed her with both hands,
4 threw her down from the kitchen like to the doorway
5 into the bedroom and he was hovering over her
6 checking her.

7 "QUESTION: What did you do, if anything?

8 "ANSWER: I ran over to where that was happening.
9 They were just getting into a fight. Then I grabbed
10 Paul by the shoulder and pulled him and he didn't
11 move and that's when I noticed he was choking Ruth
12 and her eyes were like rolling in the back of her
13 head and her mouth was open."

14 Do you recall those questions and answers?

15 A Yes.

16 Q Does that refresh your recollection as to whether
17 Ruth was fighting back?

18 MR. BIANCAVILLA: Objection.

19 THE COURT: Sustained.

20 Q As you sit here today, Mr. Kane, is it your
21 testimony that Ruth didn't fight back?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: He can answer the question but not
24 that way.

25 Form, sustained.

People - Kane - Cross

1 Q As she was being choked, did Ruth fight back?

2 A I said I thought they were getting into a fight.

3 Q Are you talking about what you said at the time
4 you --

5 A I believe that's what I said.

6 Q They were just getting into a fight.

7 Does that mean you thought she was --

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained.

10 Q Mr. Kane, you had a conversation, a number of
11 conversations with, I think it was the assistant district
12 attorney, William Dempsey. Do you recall them?

13 A Yes.

14 Q And on various dates in May, July 2nd and before
15 you testified on July 6th, 2000, do you recall those
16 conversations generally?

17 A Generally.

18 Q Do you recall the conversation before testifying
19 about there being a problem with your testimony and
20 Francine Quinn's testimony not matching?

21 MR. BIANCAVILLA: Objection.

22 THE COURT: Sustained.

23 That's not the way to ask.

24 Q Was there any discussion concerning what you say
25 you saw --

People - Kane - Cross

1 MR. BIANCAVILLA: Objection. Classic hearsay.

2 THE COURT: Sustained.

3 MR. CHAMBERLAIN: It's a question as to what the
4 witness said.

5 THE COURT: What he said is different from what
6 Mr. Dempsey said.

7 Q Do you recall what you said with respect to Ruth's
8 location on the night in question and whether she was
9 outside the back door at any time of her apartment with
10 the defendant?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: Multiple questions.

13 Q Do you recall anything that you said about where
14 Ruth was and whether she may have been outside the back
15 door of her apartment?

16 MR. BIANCAVILLA: Objection.

17 THE COURT: You have to set the foundation,
18 Mr. Chamberlain.

19 Q Was there any discussion that you took part in
20 concerning Ruth's location in those conversations with
21 Mr. Dempsey?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Sustained.

24 Q When you went to testify before the grand jury,
25 you had already been advised by an attorney; is that

People - Kane - Cross

1 correct? You had already consulted an attorney?

2 A Correct.

3 Q You don't recall that attorney's name?

4 A No, I do not.

5 Q In your conversation with -- withdrawn.

6 Did you waive immunity when you testified before
7 you testified.

8 MR. BIANCAVILLA: Objection, Judge. We went
9 through this yesterday with this witness on more than
10 one occasion.

11 THE COURT: This is the last time,
12 Mr. Chamberlain. You have gone through it a couple of
13 times already.

14 MR. CHAMBERLAIN: I went through it yesterday,
15 Judge?

16 THE COURT: I'll permit it today but this is the
17 last time.

18 Q Did you get immunity, do you know?

19 A Immunity. I didn't do anything so what do you
20 mean by immunity.

21 MR. CHAMBERLAIN: May I have the answer stricken
22 as not responsive?

23 MR. BIANCAVILLA: Judge --

24 THE COURT: He told you he didn't understand.

25 MR. BIANCAVILLA: Judge, I am going to ask to

People - Kane - Cross

1 approach if he continues this line of questioning.

2 THE COURT: I'll let you ask the question but I
3 will rule on the objections, Mr. Chamberlain.

4 MR. CHAMBERLAIN: Fine, Judge.

5 Q Did you sign a waiver of immunity? Did you waive
6 immunity when you testified agreeing to be prosecuted for
7 anything that might have happened?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained.

10 Q Did you waive immunity?

11 MR. BIANCAVILLA: Objection.

12 THE COURT: The first question you asked was
13 proper.

14 Q Did you waive immunity?

15 THE COURT: Did he sign something?

16 Q Did you sign a waiver of immunity?

17 THE COURT: If he knows.

18 A I'm not sure.

19 MR. CHAMBERLAIN: I didn't hear the answer.

20 THE COURT: Not sure, was his response.

21 Q You're not sure whether you signed anything.

22 What was your understanding with respect to
23 whether or not you could be prosecuted if you responded --
24 you were -- withdrawn.

25 You were put before the grand jury by the district

People - Kane - Cross

1 attorney; is that correct?

2 A Right.

3 Q You were responding to questions that he asked; is
4 that correct?

5 A Correct.

6 Q Was it your understanding that you would get
7 immunity for your answers to those questions?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Sustained.

10 Q What was your understanding with respect to that
11 testimony as to whether or not you would get immunity?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained as to his understanding.

14 MR. CHAMBERLAIN: The problem here is what he
15 says he doesn't understand --

16 MR. BIANCAVILLA: Judge, the --

17 THE COURT: I don't want colloquy. Ask
18 questions.

19 Q Did Mr. Dempsey, in your conversations with the
20 district attorney, did he advise you that you would not be
21 prosecuted for what you testified to, yes or no?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: Sustained. Hearsay.

24 Q Mr. Kane, shortly after -- withdrawn.

25 After this incident, did you move out of the

People - Kane - Cross

1 Farmingdale area?

2 A Correct.

3 Q Would you tell us approximately how long after?

4 A Excuse me?

5 Q When did you move out of the area?

6 A After I had spoken to the police.

7 Q After you had spoken to the police. And did
8 you -- have you been back to the area ever since?

9 MR. BIANCAVILLA: Objection. Relevancy.

10 THE COURT: Where is the relevancy?

11 Sustained.

12 Q Have you had anything -- Fran Quinn, the
13 bartender -- the waitress at the Downtown was a friend of
14 yours, was she not?

15 A I don't even remember a Fran Quinn.

16 Q You don't remember her?

17 A No.

18 Q She testified that she knew you for two years
19 prior to that incident. Would that refresh your
20 recollection?

21 A I don't remember a Fran Quinn.

22 Q Do you remember a Franny?

23 A No.

24 Q You don't remember your lawyer, you don't remember
25 Fran Quinn --

People - Kane - Cross

1 MR. BIANCAVILLA: Objection, Judge.

2 THE COURT: Sustained.

3 Q You remember -- you remember what you say happened
4 in this apartment but you don't remember anyone, that's
5 about it?

6 A Yes, I remember what happened.

7 Q Do you remember Ruthy?

8 MR. BIANCAVILLA: Objection.

9 THE COURT: Overruled.

10 A Yes.

11 Q You knew Ruthy for how long prior to this?

12 MR. BIANCAVILLA: Judge, I object. We have been
13 through this all already.

14 THE COURT: I understand. This is
15 cross-examination and this is the last time,
16 Mr. Chamberlain. You did cover that area before. Go
17 ahead.

18 Q You knew Ruthy for how long prior to her murder?

19 A Two years.

20 Q Were you a friend of Ruth?

21 A Yes.

22 Q Yes?

23 A Yes.

24 Q A boyfriend?

25 A No.

People - Kane - Cross

1 Q Were you a companion?

2 MR. BIANCAVILLA: Objection.

3 THE COURT: Well, sustained as to the word
4 companion.

5 Q Did you ever take her out to dinner?

6 A No.

7 Q Did you ever take her to a movie?

8 A No.

9 Q Did you ever take her out for a walk?

10 A No.

11 Q Did you ever take her out for a drink?

12 A I didn't take her anywhere.

13 Q Did you ever show her any affection by any
14 actions?

15 MR. BIANCAVILLA: Objection.

16 MR. CHAMBERLAIN: I'll withdraw the question.

17 Q Did you ever spend time with her at her apartment
18 that was not involved in any sexual engage -- sexual act?

19 A Yes.

20 Q You went up to her apartment on various occasions,
21 not for sex?

22 A Yes.

23 Q What did you do on those occasions?

24 A Well, it wasn't -- you know -- can you repeat that
25 question?

People - Kane - Cross

1 THE COURT: Read it back to the witness.

2 (Whereupon, the court reporter read back the
3 requested question.)

4 A It's not like we just went up there and had sex.

5 Q Just sex?

6 A No. I said it's not like we just went up there
7 and had sex.

8 Q But on each occasion you had sex; isn't that
9 correct?

10 A We had, yes, oral.

11 Q We had?

12 A Oral sex.

13 Q When you say we had oral sex, did you -- that was
14 all one way?

15 MR. BIANCAVILLA: Objection.

16 THE COURT: Sustained.

17 Q Did you provide any -- what did you supply to Miss
18 Williams on these occasions when you had oral sex?

19 MR. BIANCAVILLA: Objection.

20 THE COURT: Sustained.

21 Q Did you undress her on any of these occasions?

22 MR. BIANCAVILLA: Objection.

23 THE COURT: I'll permit it.

24 A Can you repeat that, please?

25 Q Did you undress her on any of these occasions?

People - Kane - Cross

1 A She might have taken her shirt off.

2 Q She might have taken her shirt off?

3 MR. BIANCAVILLA: Objection.

4 THE COURT: Sustained.

5 Q Other than taking her shirt off -- withdrawn.

6 You never had sexual intercourse with her; right?

7 A No.

8 Q What was -- were you supplying anything else to
9 Ruth during this period of time?

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Sustained as to form,

12 Mr. Chamberlain.

13 Q When you went up to her apartment. How many
14 occasions was it over the two years?

15 MR. BIANCAVILLA: Again, I object. This is all
16 repetitive from yesterday and this morning, Judge.

17 THE COURT: Overruled.

18 Q How many times?

19 A Excuse me?

20 Q How many times?

21 A How many times what?

22 Q How many times did you go up to her apartment to
23 have sex?

24 A I told you I wouldn't just go up there to have
25 sex.

People - Kane - Cross

1 Q You had sex every time you went up there; is that
2 correct?

3 A Correct.

4 Q And how many times was that?

5 A Four or five times.

6 Q What?

7 A Four or five times.

8 Q Did you supply her with anything other than
9 letting her give you a blow job on those occasions?

10 MR. BIANCAVILLA: Objection.

11 THE COURT: Sustained.

12 MR. CHAMBERLAIN: One minute, please.

13 Nothing further.

14 THE COURT: Mr. Biancavilla?

15 MR. BIANCAVILLA: Briefly, Judge.

16 May we just put People's 31 on the easel,
17 please?

18 THE COURT: Sure.

19 MR. BIANCAVILLA: Judge, I would ask to be
20 permitted to ask Mr. Kane to step down.

21 THE COURT: Step down to the easel, Mr. Kane.

22 REDIRECT EXAMINATION

23 BY MR. BIANCAVILLA:

24 Q Mr. Kane, I am going to ask you to take a red
25 arrow and just place it in the photograph, People's 18,

People - Kane - Redirect

1 where Mr. Scrimo was seated, People's 18? Do you see
2 where that is?

3 A Yes (witness complying).

4 Q Please place a blue arrow in the seat where you
5 were seated when you and Miss Williams engaged in oral
6 sex?

7 A (Witness complying.)

8 Q Now, would you place a red arrow where you
9 observed Mr. Scrimo throw Ruth Williams to the ground?

10 A (Witness complying.)

11 Q No. No. I'm sorry. On the floor plan above that
12 photo.

13 A Here?

14 Q On the floor plan, put an arrow pointing point to
15 the doorway?

16 A (Witness complying.)

17 Q Now, my question is, when you got up and pulled
18 your pants back up, it was your testimony you went to the
19 living room to put on the stereo; correct?

20 A Right.

21 Q Could you just draw with this blue marker the
22 route you took through the apartment?

23 A (Witness complying.)

24 Q Just put a blue arrow pointing towards where the
25 stereo was located?

People - Kane - Redirect

1 A (Witness complying.)

2 Q Now, did you take that same basic route back into
3 the kitchen after you finished putting the stereo on?

4 A Correct.

5 Q Was it at that point when Mr. Scrimo had come back
6 from 7-Eleven?

7 MR. CHAMBERLAIN: Objection to these yes or no
8 questions, Judge, was it at that point that he did
9 such and such.

10 THE COURT: He's allowed to ask yes or no
11 questions.

12 MR. CHAMBERLAIN: He's suggesting the answer.

13 THE COURT: That is called leading perhaps?

14 MR. CHAMBERLAIN: That's what I am saying.

15 THE COURT: Sustained.

16 Q Mr. Kane, after you put the CD in the stereo, what
17 happened? What did you do?

18 A I went back into the kitchen where Ruthy and
19 Scrimo were talking.

20 Q Would you take a red marker and draw for the jury
21 where Mr. Scrimo was when Ruthy said to him let him go,
22 let him go home to his fat ugly wife?

23 A Right here.

24 Q Put an X there and just draw the route as to where
25 the direction went up to the point where he grabbed Ruthy?

People - Kane - Redirect

1 A (Witness complying.)

2 Q Just put an X there?

3 A (Witness complying.)

4 Q Now, draw an X where he pushed you out of the way
5 to get Ruthy. Use the blue marker for that?

6 A (Witness complying.)

7 Q Now, would you just, while you are standing in
8 front of the jury, just demonstrate for the jury the
9 manner in which you saw Mr. Scrimo wrapping that cord
10 around Ruth's neck?

11 MR. CHAMBERLAIN: I would object. He testified
12 to this on direct.

13 THE COURT: And you brought it up on cross,
14 Mr. Chamberlain. The assistant district attorney has
15 a right to bring it up on redirect.

16 MR. CHAMBERLAIN: I basically brought up that it
17 happened the way he testified on direct.

18 THE COURT: Mr. Chamberlain, overruled.

19 MR. CHAMBERLAIN: Fine.

20 Q Please demonstrate for the jury the manner in
21 which Mr. Scrimo wrapped the cord around Miss William's
22 neck?

23 A He had the cord like this and he put it around
24 her, like wrapped it around like this and yanked up on it
25 (demonstrating).

People - Kane - Recross

1 MR. BIANCAVILLA: Let the record indicate he made
2 two circular motions and then pulled up with both
3 hands.

4 MR. CHAMBERLAIN: The record should indicate he
5 didn't do that before, Judge.

6 THE COURT: Excuse me. The record shall so
7 indicate that.

8 MR. BIANCAVILLA: I have no further questions for
9 Mr. Kane.

10 THE COURT: You can sit down.

11 Recross, Mr. Chamberlain?

12 MR. CHAMBERLAIN: Yes, Judge, I have a few.

13 RECROSS EXAMINATION.

14 BY MR. CHAMBERLAIN:

15 Q Mr. Kane, you just testified in response to the
16 district attorney that Scrimo was inside the apartment
17 door when he turned and pushed you aside and went to --
18 directly at Ruth; is that correct?

19 A Can you say that again, please?

20 MR. CHAMBERLAIN: Judge, may I have him come
21 down?

22 THE COURT: Please go down to the easel.

23 Q The place where -- when Scrimo turned and went
24 directly at Ruth was the blue X; is that correct?

25 A No. Here (indicating).

People - Kane - Recross

1 Q That's inside the apartment door?

2 A Yes, in the hallway going to the exit. It's this
3 hallway right here between the bathroom, right here, not
4 on the outside. It's still in the apartment.

5 Q You testified before they were down a hallway?

6 A Right.

7 Q Is that a hallway there?

8 A This hallway right here (indicating).

9 Q Do you recall prior testimony where you said he
10 went down a hallway, that would be the hallway outside;
11 right?

12 MR. BIANCAVILLA: Objection.

13 THE COURT: Sustained.

14 Q Yesterday you indicated how the victim was -- how
15 he stood behind the victim and pulled up with a cord like
16 this?

17 A I went like this yesterday too (indicating).

18 Q You went like that yesterday?

19 A Yes. He wrapped it around her neck.

20 MR. CHAMBERLAIN: Nothing further, Judge.

21 THE COURT: Anything further, Mr. Biancavilla?

22 MR. BIANCAVILLA: No, Judge.

23 THE COURT: Mr. Kane, you may step out.

24 (Whereupon, the witness was excused from the
25 witness stand.)

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1 THE COURT: People, do you have any other
2 witnesses?

3 MR. BIANCAVILLA: The People have no further
4 witnesses, your Honor. The people rest.

5 THE COURT: Ladies and gentlemen, at this point
6 we are going to excuse you for lunch and ask you to be
7 back here at two o'clock.

8 Do not discuss the case amongst yourselves or
9 with anyone else. Keep an open mind. Do not form or
10 express any opinions until the entire case has been
11 completed.

12 Do not read or listen to any accounts of the
13 case should they be reported in the media. Do not
14 visit or view any place or premises that have been
15 mentioned.

16 You are not to permit any party to discuss the
17 case with you or attempt to influence you, and you
18 must promptly report to the Court any violation
19 thereof.

20 Have a nice lunch and we'll see you at two
21 o'clock

22 (Whereupon, the sworn jurors exited the
23 courtroom.)

24 THE COURT: Are there any motions.

25 MR. CHAMBERLAIN: I will reserve motions until

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1 the end of the case, Judge.

2 THE COURT: Excuse me?

3 MR. CHAMBERLAIN: I move for a dismissal based
4 upon a failure to make out a prima facie case.

5 THE COURT: People?

6 MR. BIANCAVILLA: Rely on the record.

7 THE COURT: Application denied.

8 Counsel, we will begin at two o'clock.

9 MR. BIANCAVILLA: Judge, I would like the names
10 of witnesses and I would like an offer of proof at
11 this time regarding the relevancy of their testimony
12 and admissibility.

13 THE COURT: Mr. Chamberlain, may we have an offer
14 of proof?

15 MR. CHAMBERLAIN: We did that yesterday.

16 MR. BIANCAVILLA: I would like to go through each
17 specific witness, Judge.

18 THE COURT: The People are entitled to an offer
19 of proof at this point. You know that.

20 MR. CHAMBERLAIN: I made one yesterday, Judge,
21 with respect to the witnesses I knew. I have to find
22 out who has shown up and consult with my client. I am
23 not even sure what I am going to put on at this point.

24 MR. BIANCAVILLA: He has them here in the
25 hallway. I want an offer of proof as to each one.

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1 THE COURT: Mr. Chamberlain, I'll excuse you for
2 a few minutes. We'll come back and deal with an offer
3 of proof in about five minutes.

4 MR. BIANCAVILLA: Thank you, Judge.

5 (Whereupon, a brief recess was taken.)

6 THE COURT: Mr. Chamberlain, are you ready at
7 this point to give me an offer of proof with respect
8 to your witnesses?

9 MR. CHAMBERLAIN: Yes. Just the witnesses who
10 are present here, specific witnesses?

11 THE COURT: You tell us in conference you have an
12 expert witnesses. I am talking about right now the
13 other witnesses that you have here today.

14 MR. CHAMBERLAIN: Yes, Judge.

15 MR. BIANCAVILLA: Not to interrupt you, but I
16 would like to hear one witness at a time and make
17 argument with respect to that witness.

18 THE COURT: Yes.

19 MR. CHAMBERLAIN: Judge, we have outside -- let's
20 take the one -- we have Mr. Ball outside.

21 THE COURT: Start with Mr. Ball. May I have an
22 offer of proof as to what he will testify to.

23 MR. CHAMBERLAIN: He will testify to a drug
24 purchase from Mr. Kane.

25 THE COURT: I thought I made that ruling

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1 yesterday.

2 MR. CHAMBERLAIN: My understanding is that's
3 correct, you made a ruling, but I'm not certain about
4 it and they already had been called to come in.

5 THE COURT: Did you read the cases I gave you?

6 MR. CHAMBERLAIN: Yes, I did, and what happens to
7 be a case I was going to cite to your Honor.

8 I still believe that there should be testimony
9 allowed with respect to prior drug sales by this
10 witness, in view of his involvement in this crime and
11 the relationship with the victim.

12 THE COURT: I am going to read to you another
13 case, People versus Johnson, a Second Department
14 Appellate Division case, 143 AD2d 847. I believe it's
15 right on point.

16 In the instant case it is clear from defense
17 counsel's offer of proof that the testimony of the
18 proposed witness would have been collateral to the
19 question of the defendant's guilt and was sought to
20 be introduced merely to impeach the credibility of a
21 prosecution witness.

22 It is well settled that a party who is
23 cross-examining a witness may not call other
24 witnesses to correct that witness' answer concerning
25 collateral matters solely to impeach credibility.

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1 I'll also cite People versus Alvino 71 NY2d 233
2 at page 243 and 48, and People versus Pavao 15 NY2d
3 282, at pages 288 and 289. This is right on point,
4 Mr. Chamberlain.

5 MR. CHAMBERLAIN: Your Honor, these witnesses are
6 not collateral in the regard they will be testifying
7 in corroboration.

8 THE COURT: Let's talk about Mr. Ball. Mr. Ball,
9 you told me so far, was going to testify as to an
10 alleged drug sale between him and Mr. Kane; is that
11 correct?

12 MR. CHAMBERLAIN: Yes, Judge.

13 THE COURT: That is right on point.

14 MR. CHAMBERLAIN: Pardon me?

15 THE COURT: This case is directly on point.

16 MR. CHAMBERLAIN: The testimony of Mr. Ball --

17 THE COURT: He could be testifying to something
18 else, that's fine.

19 What else?

20 MR. CHAMBERLAIN: The testimony of Mr. Ball, and
21 a number of witnesses, will indicate this is not
22 merely to attack, collateral, to attack Mr. Kane's
23 credibility but to establish his relationship to the
24 victim in this case and that involves drug sales
25 between these people and their knowledge of --

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1 THE COURT: With respect -- yes?

2 MR. CHAMBERLAIN: -- and the victim.

3 One of the witnesses will testify about drug
4 sales directly to the victim. For those reasons, I
5 think the witness would be an exception to the cases
6 your Honor has cited.

7 THE COURT: No. This is right on point,
8 Mr. Chamberlain.

9 I'll hear you, Mr. Biancavilla.

10 MR. BIANCAVILLA: Judge, I believe the Court
11 cited the cases. I have one further case to cite,
12 People v. Lyed, which is another Second Department
13 case decided in April, 1990, and the citation for that
14 is 160 AD2d 817, 1990, and in Lyed the Second
15 Department stated:

16 Testimony concerning the complaining witness'
17 reputation for bad moral character and his alleged
18 drug trafficking activities. Impeachment of a
19 witness by evidence of his reputation in the
20 community is limited to reputation for truth and
21 veracity and may not extend to general bad moral
22 character.

23 Additionally, impeachment by use of immoral,
24 vicious, or criminal acts is appropriate only on
25 cross-examination and not by use of extrinsic

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1 evidence.

2 This case cites People v. Pavao and Richardson
3 on Evidence, Judge.

4 THE COURT: Mr. Chamberlain, with respect to
5 cross-examining -- excuse me. With respect to putting
6 Mr. Ball on the stand to testify that he purchased
7 drugs from Mr. Kane, if that was your intention, this
8 is right on point with Lyed, with Johnson and Pavao,
9 and I won't permit you to do it.

10 Now, if you are going to introduce evidence with
11 respect to the witness' reputation for truth and
12 veracity, that's a different story. However, I will
13 not let you get into specific acts with respect to --
14 in contravention of what you cross-examined Mr. Kane
15 on previously because that is improper according to
16 the cases and you can't do that.

17 Is there another reason you will be bringing
18 Mr. Ball in to testify?

19 MR. CHAMBERLAIN: Judge, with respect to
20 Mr. Ball, would your Honor allow me to put him on to
21 testify to Mr. Kane's lack of veracity and his
22 reputation in the community for not having -- not
23 being truthful either? People who are known as drug
24 dealers are known not to --

25 THE COURT: As long as you don't mention drug

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1 dealers. If you do mention drug dealers, I'll say
2 you'll have a problem with me.

3 MR. BIANCAVILLA: I don't want the questions
4 coming out in front of the jury. That's why I am
5 asking for the offer of prove. If he can lay the
6 proper foundation for truth fullness and veracity in
7 the community, he can put on whoever he wants. But if
8 he can't lay the required foundation --

9 THE COURT: Will read you Pavao?

10 MR. CHAMBERLAIN: I read it, Judge. I appreciate
11 your Honor making a copy available for me. I have
12 read it.

13 THE COURT: What it says is that they limit the
14 use of extrinsic impeaching testimony to attack a
15 witness' reputation for truth and veracity.

16 In doing so, we held, and that's the court, that
17 evidence of the witness' general reputation is
18 inadmissible for the purpose of impeaching his
19 testimony.

20 The rule set forth in Hinksman is not in
21 conflict with the policy considerations which
22 preclude parties from introducing for purpose of
23 impeachment extrinsic evidence to contradict a
24 witness' answers.

25 What it boils down to, Mr. Chamberlain, if you

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1 can set the proper foundation with respect to truth
2 and veracity in the community, I will permit you to
3 put Mr. Ball on to testify. But I don't want you
4 asking questions or elicit evidence with respect to
5 drug sales as we had earlier -- when we had the
6 colloquy on the record earlier about the sealed
7 record that was unsealed.

8 I am making it perfectly plain here so there are
9 no problems here. You can't do that. The cases
10 preclude you from doing that. You can't offer
11 collateral evidence with respect to a witness you had
12 full opportunity to cross-examine.

13 MR. CHAMBERLAIN: The sealed records you are
14 referring to is the sealed record of Mr. Ball?

15 THE COURT: Yes. Judge Honorof unsealed it and
16 Mr. Ball stated there was a drug sale from Mr. Kane to
17 Mr. Ball.

18 MR. BIANCAVILLA: Judge, you're precluding him
19 from saying anything about drugs?

20 THE COURT: Absolutely.

21 MR. BIANCAVILLA: Thank you.

22 THE COURT: You had the complete opportunity to
23 cross-examine with respect to all those issues,
24 Mr. Chamberlain. Pavao is right on point with respect
25 to that.

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1 MR. CHAMBERLAIN: Not to belabor the point, but
2 didn't the court of appeals reverse for not allowing
3 testimony as to prior -- of this type where the court
4 refused to allow it.

5 What your Honor is referring to is Dicta
6 (phonetic). The main ruling of the case was that
7 where a court refuses to allow that testimony,
8 there's a basic --

9 THE COURT: Mr. Chamberlain, that had to do with
10 another reason that we are talking about the witness'
11 bad reputation in the community for truth and
12 veracity. Here they are restating the general law
13 which has also been followed in the Second Department
14 by Johnson, and apparently followed by People versus
15 Alveno which is also a Court of Appeals case, as well
16 as People versus Lyed which has been read into the
17 record before.

18 Anybody else, Mr. Chamberlain?

19 MR. CHAMBERLAIN: Yes, Judge. We also discussed
20 Jennifer Hartman.

21 THE COURT: Okay.

22 MR. CHAMBERLAIN: She purchased previously --
23 there will be testimony that the material she
24 purchased was cut and was no good and then there
25 was --

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1 THE COURT: He denied that, that's correct, on
2 cross-examination.

3 MR. CHAMBERLAIN: Yes, he did.

4 MR. BIANCAVILLA: Same objection.

5 MR. CHAMBERLAIN: He said he didn't recognize the
6 name. He may recognize her after he sees her, I don't
7 know.

8 MR. BIANCAVILLA: My objections are the same.

9 THE COURT: Well, at this point you've had the
10 full opportunity to cross-examine Mr. Kane and you
11 could have attempted to refresh his recollection with
12 respect to Miss Hartman, which you didn't. Therefore,
13 the same rules must apply because this is collateral.

14 Anybody else?

15 MR. CHAMBERLAIN: Yes, Judge. We have Stephanie
16 Domaradzki who would testify to purchasing drugs from
17 Mr. Kane.

18 THE COURT: You additionally questioned with
19 respect to that; is that true? You questioned
20 Mr. Kane with respect to that potential witness?

21 MR. BIANCAVILLA: Same objection, Judge.

22 THE COURT: Same ruling, Mr. Chamberlain.

23 MR. CHAMBERLAIN: I haven't finished.

24 THE COURT: I'm sorry. Go ahead. I thought that
25 was the only point of testimony.

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1 MR. CHAMBERLAIN: I think I should be allowed to
2 get into her testimony with respect to purchases at or
3 about the time of the crime, including purchases with
4 the victim from Mr. Kane on or about that date.

5 THE COURT: What does a purchase with the victim
6 have to do with it?

7 MR. CHAMBERLAIN: It has to do -- this is not
8 just a witness to a crime. This is a person who was
9 present who was certainly, at the very least, and
10 based upon physical evidence, a participant in this
11 matter based on his own testimony, who at the very
12 least should have been charged with a felony of
13 accessory after the fact, facilitation of murder, and,
14 also, the relationship between the victim and the
15 witness is crucial to the issue here, the issues
16 before this jury.

17 It's a question of who did it. He's not just a
18 witness. What I see -- what he saw happening, he was
19 part and parcel of this and his relationship to the
20 victim is crucial in this case.

21 THE COURT: Mr. Biancavilla?

22 MR. BIANCAVILLA: Same objection, Judge. It's
23 all collateral.

24 THE COURT: Mr. Chamberlain, I have permitted you
25 to make your record. These are all collateral to the

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1 issue. If you want to see Johnson, I will show you
2 but the cases are on point, Johnson, Lyed and Pavao.

3 MR. CHAMBERLAIN: I submit it would be on point
4 as to what happened here, Judge, not collateral. We
5 are talking about the date of the murder. I
6 respectfully except.

7 THE COURT: We are talking about rules of
8 evidence, Mr. Chamberlain. The trial is run on rules
9 of evidence.

10 MR. CHAMBERLAIN: I have a number of character
11 witnesses here, Judge.

12 THE COURT: Yes?

13 MR. CHAMBERLAIN: Do you want those?

14 MR. BIANCAVILLA: Yes, I would like to know,
15 Judge.

16 THE COURT: Yes, please.

17 MR. CHAMBERLAIN: Martin Barten who is on the
18 People's list. I think he's the manager of the
19 building in which -- he's the manager of the building
20 in which Mr. Scrimo is employed and has been employed
21 for about a dozen years, 15 years.

22 MR. BIANCAVILLA: Wait. Wait. What character
23 trait will he be testifying to?

24 MR. CHAMBERLAIN: To Mr. Scrimo's character and
25 the type of person he has been over the past 15 years

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1 he has known him.

2 MR. BIANCAVILLA: That's inadmissible, Judge.

3 MR. CHAMBERLAIN: Well --

4 MR. BIANCAVILLA: It has to be a specific
5 character trait, Judge, relating to the issue of
6 what -- I'll specifically refer the Court to a section
7 of Richardson.

8 MR. CHAMBERLAIN: He'll testify to his
9 peacefulness.

10 MR. BIANCAVILLA: Is that the only character
11 trait?

12 THE COURT: Is that the character trait he's
13 going to testify to?

14 MR. CHAMBERLAIN: Judge, I haven't had a chance
15 to really --

16 THE COURT: I gave you the opportunity. Why
17 didn't you do it while you were out there?

18 MR. CHAMBERLAIN: I haven't had time.

19 THE COURT: Talk to him. Is he here?

20 MR. CHAMBERLAIN: As far as I know, yes, Judge.

21 THE COURT: We stand in recess so you can speak
22 to him. I'll see you back here in a few minutes. How
23 many more witnesses do you have?

24 MR. CHAMBERLAIN: I have a number, Charles Ross,
25 who is a coach but he's not here yet; Sal Bucolo, the

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1 board president; Robert Haliner, who works for the
2 post office; Keith Wilson who is a retired correction
3 officer; all of whom would testify that the defendant
4 is a peaceable man, that they have known him for
5 years, and that his character, his representation in
6 the community is excellent, that he is peaceable and
7 truthful.

8 THE COURT: Mr. Biancavilla?

9 MR. BIANCAVILLA: Yes. First of all,
10 truthfulness and veracity are not properly before this
11 jury unless the defendant testifies so no character
12 evidence can be offered.

13 THE COURT: We are talking about peacefulness.

14 MR. BIANCAVILLA: No. He said truthfulness.
15 Unless the defendant testifies -- and that's not
16 before this jury. That's pursuant to People v.
17 Sullivan 177 AD2d 673.

18 The court found -- we further find that the
19 court did not err precluding the defendant from
20 introducing character evidence as to his reputation
21 for truth and veracity as such evidence did not
22 relate to the traits involved in the charges against
23 him.

24 Assault, murder, violent crimes, truth and
25 veracity are not an issue, unless the defendant takes

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1 the stand first.

2 With respect to peacefulness, then the People
3 submit that is a character trait which a proper
4 foundation can be laid for and the introduction of
5 that evidence can be introduced but not peacefulness
6 and veracity, Judge. I'm sorry. Not truthfulness
7 and veracity. I am sorry.

8 MR. CHAMBERLAIN: The determination as to whether
9 the defendant takes the stand has not been made.

10 MR. BIANCAVILLA: Then he has to wait for those
11 witnesses.

12 THE COURT: Mr. Chamberlain, that's up to you.

13 MR. CHAMBERLAIN: All those witnesses, Judge,
14 would testify to the defendant's reputation for
15 peacefulness and I think they would be cogent
16 witnesses on that source.

17 THE COURT: Counsel, see you at two o'clock.
18 Anybody else?

19 MR. CHAMBERLAIN: No, Judge, not at this point.

20 THE COURT: I would ask you to contact your
21 experts and have them here for Monday.

22 MR. CHAMBERLAIN: Unfortunately, as it turns out,
23 I found out one would be here today but I didn't know
24 how long it would take.

25 THE COURT: You can bring them here this

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1 afternoon. Which expert?

2 MR. CHAMBERLAIN: That would be Doctor Raffae.
3 He's an orthopedic surgeon.

4 THE COURT: You can bring him up, if you like.

5 MR. BIANCAVILLA: I have a witness to call from
6 the medical center to observe his testimony. I won't
7 be able to get that individual this afternoon. He
8 couldn't tell us yesterday who was going to be here.
9 He said he wasn't having any experts here.

10 THE COURT: Have all your experts on Monday.

11 MR. BIANCAVILLA: Fine. I will have mine too.

12 THE COURT: How many experts do you have at this
13 point?

14 MR. CHAMBERLAIN: I have three but -- at this
15 point two would be plenty on Monday, I'm sure.

16 THE COURT: Okay.

17 MR. CHAMBERLAIN: Assuming we are going to do
18 that, Judge.

19 THE COURT: Just be ready to proceed because this
20 jury has been here more than two weeks. I would like
21 to continue today to finish.

22 MR. BIANCAVILLA: So it's clear, so I know what
23 to prepare for this afternoon, you are not going to
24 permit the testimony of Charles Ball, Jennifer Hartman
25 or Stephanie -- I forget her last name.

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1 THE COURT: I will not permit them because it's
2 collateral, if that's the only evidence, if that's the
3 only testimony they will give that has to do with the
4 drug sales, I will not permit that because that's
5 collateral. Okay?

6 MR. CHAMBERLAIN: I respectfully except,
7 particularly with respect to the last named witnesses.
8 We hadn't discussed her yet.

9 THE COURT: You certainly have an exception.

10 (Whereupon, a luncheon recess was taken.)

11 A F T E R N O O N S E S S I O N

12 THE CLERK: Case on trial continued.

13 THE COURT: Mr. Chamberlain?

14 MR. CHAMBERLAIN: Judge, we had a conference in
15 chambers regarding cross-examination of character
16 witnesses. I would like to have that put on the
17 record in front of my client. Rather than my stating
18 what Mr. Biancavilla's position would be, I think he
19 should.

20 THE COURT: All right. Earlier, Mr. Chamberlain,
21 you told us in your offer of proof that you were going
22 to introduce character witnesses with respect to your
23 client's peacefulness in the community.

24 MR. CHAMBERLAIN: That's right.

25 THE COURT: Mr. Biancavilla, do you wish to be

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1 heard?

2 MR. BIANCAVILLA: Basically, what we discussed in
3 chambers is based upon Richardson and relevant case
4 law. Character witnesses for the accused may
5 legitimately be asked upon cross-examination whether
6 or not they heard particular reports or rumors
7 derogatory to the accused's reputation as testified to
8 by them.

9 If they came in and said he had a reputation in
10 the community for peacefulness, the People have every
11 intention of cross-examining them with regard to
12 certain rumors or statements made to various other
13 individuals which the People obtained statements
14 from.

15 They involve various statements that Mr. Scrimo
16 had made that he had committed a series of robberies,
17 one involved a stick up at a gas station in close
18 proximity to the Eighth Precinct station house. In
19 that robbery he hit a gas station attendant in the
20 face with a blackjack, the fact that he stated that
21 he used to work as a bouncer in a Korean whorehouse
22 in Queens, basically, incidents of that nature.

23 Clearly, Judge, that type of cross-examination
24 is permitted under Richardson and the case law and
25 the cross-examination must be limited to the witness'

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1 here of these reports or rumors as it would affect
2 their reputation testimony.

3 Basically what Richardson says is that the rumor
4 or reports inquired into must be of such nature as to
5 tend to logically weaken the character of witness'
6 testimony that the defendant enjoys a good
7 reputation. That's what the People intend to do with
8 respect to these character witnesses.

9 MR. CHAMBERLAIN: For the record, the statements
10 Mr. Biancavilla referred to are statements from jail
11 house informants that were sealed in the beginning of
12 this trial.

13 THE COURT: As long as the People have a good
14 faith basis for asking the questions, character
15 witnesses for the accused may legitimately be asked
16 upon cross-examination whether they have heard
17 particular reports or rumors derogatory to the
18 accused's reputation as testified to by them. That's
19 section 4-406 from Richardson and People versus Kuss
20 42 NY2d 436.

21 This have you heard inquiry is permitted as
22 bearing on the credibility of witnesses, for if the
23 rumors or reports had come to their attention, the
24 value of their testimony as to the accused's good
25 reputation may seriously be impaired. The

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1 cross-examination must be limited to the witness'
2 hearing of these reports or rumors.

3 Now, if a character witness is going to be
4 placed on the stand who is going to testify to the
5 peacefulness of the defendant, the People, by the
6 case law and by the evidence as permitted by
7 Richardson on Evidence, the People can cross-examine
8 him with respect to statements that were heard by
9 another witness as long as he has a good faith basis
10 to ask these questions.

11 Mr. Biancavilla, do you have a good faith basis
12 for asking these questions?

13 MR. BIANCAVILLA: Yes, we do, Judge. These are
14 two witnesses, a gentleman by the name of Siran
15 Smith(phonetic) and Robert Gunther(phonetic). They
16 were interviewed by both detectives from the Homicide
17 Squad and the assistant district attorney, William
18 Dempsey. Both of those interviews revealed that while
19 Mr. Scrimo was incarcerated at the Nassau County Jail
20 these statements among others were in fact made to
21 them.

22 THE COURT: Based on that, the People do have a
23 good faith basis, and the People would be able to
24 cross-examine the defendant with respect to those
25 statements that were made to Mr. Dempsey and the

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1 inmates.

2 MR. CHAMBERLAIN: Respectfully except.

3 May we have a minute or two, Judge?

4 THE COURT: Of course. I'll take a recess.

5 MR. CHAMBERLAIN: We can probably stay right
6 here. I have already discussed this with my client.

7 THE COURT: I'll take a few minutes.

8 (Whereupon, a brief recess was taken.)

9 THE CLERK: Case on trial continues.

10 THE COURT: Mr. Chamberlain?

11 MR. CHAMBERLAIN: At this time, the defense
12 rests.

13 THE COURT: All right. I have to bring the jury
14 in so you can rest in front of the jury.

15 Counsel, I will send the jury home until 9:30 in
16 the morning. At that time we will have summations
17 and charge.

18 After the jury has left, I'll give you time to
19 prepare for the precharge conference. We'll do that
20 this afternoon.

21 MR. CHAMBERLAIN: Judge, I have to make a
22 suggestion that we ask the jury to come back at 10:00
23 so we have half an hour for precharge before --

24 THE COURT: We'll do that this afternoon.

25 MR. CHAMBERLAIN: I am not ready.

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1 THE COURT: To give you some insight, I will tell
2 you that anything you do over the weekend that you
3 want to bring to my attention, I will certainly permit
4 you to do that. The only reason I do it is because,
5 summations and charge on that day, we should start as
6 early as possible. I will give you the opportunity at
7 that point to give me any additional charges that you
8 want me to charge the jury.

9 MR. CHAMBERLAIN: Thank you.

10 (Whereupon, a brief recess was taken.)

11 THE CLERK: Recall the case on trial. The
12 attorneys are present and the jury is not present.

13 THE COURT: In order to complete the record, I
14 did some additional research with respect to the
15 issues. I would like to put a couple of cases on the
16 record.

17 In any event, it is well established when the
18 defendant places his character in issue by presenting
19 a character witness, the People may cross-examine
20 that witness by inquiring as to whether he heard the
21 particular reports or rumors derogatory to the
22 defendant's reputation testified to by the witness.
23 I am citing from People versus Cruz 147 AD2d 584.

24 Additionally, in the case of -- it's a Second
25 Department case, People versus Coleman which is 195

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1 AD2d 476:

2 The court did not improperly exercise it's
3 discretion permitting the prosecutor to question the
4 defendant's character witness about whether he heard
5 that the defendant had a previous arrest for a
6 burglary in the third degree.

7 Therefore, the Court is ruling that the People
8 would be permitted to question, since they have given
9 me a good faith basis for the information, they would
10 be able to question the character witness who would
11 testify with respect to peacefulness.

12 Counsel, at this point we will bring the jury
13 up.

14 Anything further, Mr. Chamberlain?

15 MR. CHAMBERLAIN: Nothing further.

16 THE COURT: Mr. Biancavilla?

17 MR. BIANCAVILLA: Nothing, Judge.

18 THE COURT: Let's bring them up.

19 (Whereupon, there was a brief pause in the
20 proceedings.)

21 THE COURT: Bring the jury in.

22 (Whereupon, the sworn jurors entered the
23 courtroom and resumed their respective seats.)

24 THE CLERK: Continuing case on trial. All
25 parties are present.

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1 Do counsel stipulate the jurors are present and
2 seated in the proper order?

3 MR. BIANCAVILLA: So stipulated.

4 MR. CHAMBERLAIN: So stipulated.

5 THE CLERK: Thank you.

6 THE COURT: Mr. Chamberlain?

7 MR. CHAMBERLAIN: Yes, your Honor. The defense
8 rests.

9 THE COURT: Ladies and gentlemen, you have now
10 heard all the evidence you are going to hear in this
11 case. The only thing left is summations of counsel
12 and my charge to you on the law. That will take place
13 Monday morning at 9:30.

14 At this point we are going to excuse you for the
15 day but I am going to admonish you again, do not
16 discuss this case among yourselves or with anyone
17 else until the entire case is completed and that
18 means until you have heard the summations and I have
19 given you the charge as to the law which applies to
20 the counts of the indictment which will be given to
21 your for your consideration.

22 You must not read or listen to any account or
23 discussion of this case in the event it is reported
24 in newspaper or any other media and that includes
25 accessing the internet.

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1 You must not visit or view the premises or place
2 where the offense or offenses charged were allegedly
3 committed or any other premises or place involved in
4 this case.

5 You are not to permit my party to discuss this
6 case with you or attempt to influence you and must
7 promptly report to the court any attempt within your
8 knowledge involving any attempt by any person to
9 improper influence any member of the jury.

10 Ladies and gentlemen, at this point we are going
11 to excuse you. Please get here early enough that we
12 can start as close to 9:30 as possible. Sometimes
13 parking is a problem. Have a nice weekend and we'll
14 see you Monday morning

15 (Whereupon, the sworn jurors exited the
16 courtroom.)

17 (Whereupon, a brief recess was taken.)

18 THE COURT: Counsel, at this point we are going
19 to have a brief charge conference, and what I am going
20 to do is I'm going to -- first let me preface this by
21 saying that even though what I am going to do today is
22 read what CJI sections I will be charging to this
23 jury, I will give you an opportunity on Monday before
24 you sum up to give me any additional charges or make
25 any additional exceptions at that point.

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1 Additionally, after my charge, I'll even permit
2 you to come up and, if there are additional
3 exceptions or requests you want to make, I'll give
4 you an opportunity at that point and I will rule upon
5 that.

6 Counsel, I have provided each one of you a copy
7 of the proposed verdict sheet.

8 Is that acceptable to the People.

9 MR. BIANCAVILLA: Yes.

10 MR. CHAMBERLAIN: One exception, Your Honor.

11 THE COURT: Yes, Mr. Chamberlain?

12 MR. CHAMBERLAIN: I would ask that the Court
13 charge the jury that the two counts are different ways
14 of pleading the same act so they are not confused that
15 they are separate.

16 THE COURT: That's why I put this here where it
17 says if, and only if, you find the defendant not
18 guilty of count one, then you must proceed to count
19 two.

20 If they find him guilty, for argument's sake, of
21 count one, they don't have to proceed to count two.
22 If they find him not guilty of count one, then they
23 must proceed to count two. I think it's pretty
24 clear.

25 MR. CHAMBERLAIN: I think the jury could still be

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1 confused by the alternative language and I think I
2 would request -- I think it would be less confusing
3 for them if you indicated that -- must proceed to
4 count two, which is pleading murder two under an
5 alternate theory of the Penal Law so that they
6 understand there are difference theories for the same
7 act.

8 THE COURT: Mr. Biancavilla?

9 MR. BIANCAVILLA: Judge, we would object to that.
10 The basis for the objection is that you will read to
11 them the indictment at the time of the charge and they
12 will see the differences between count one and count
13 two. Any further language within the verdict form is
14 not necessary, nor is it required under the law,
15 Judge.

16 MR. CHAMBERLAIN: Judge, may I be heard?

17 THE COURT: Yes, go ahead.

18 MR. CHAMBERLAIN: It's a simple clarification. I
19 don't have Mr. Biancavilla's faith in the layman jury
20 understanding the significance of reading -- from
21 reading an indictment put together with all of the
22 rest of the charges they have to absorb. It's not
23 a --

24 MR. BIANCAVILLA: If the jury has questions --

25 THE COURT: All right. I'll let you know.

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1 Counsel, at this point I am going to read the
2 CJI section numbers to you with the titles so you
3 will know exactly what I am charging:

4 CJI 5.00 entitled final instructions; 5.01 --
5 these are all CJI charges -- summations of counsel;
6 5.05, review principles from pretrial charge; 5.10,
7 function of jury.

8 MR. CHAMBERLAIN: I'm sorry, Judge?

9 THE COURT: 5.10, entitled function of jury;
10 5.11, function of court; 5.12, function of attorneys;
11 5.13, arguments of counsel; 5.15, byplay of counsel;
12 5.16, colloquy of court and counsel; 5.18, court's
13 questioning witnesses; 5.25, no inference from
14 rulings; 6.01 safeguards; 6.02, indictment not
15 evidence; 6.05, burden of proof; 6.10, presumption of
16 innocence; 6.20, reasonable doubt; a charge with
17 respect to juror expertise; and a charge with the use
18 of internet is prohibited; 6.30, jury not to consider
19 punishment; 7.01, witness, right to call; 7.02,
20 credibility of witnesses, 7.06, falsus in uno; 7.08,
21 police officer versus witness' credibility; a charge
22 with respect to reconciling discrepancies; 7.05, with
23 respect to the defendant not testifying in this case;
24 7.13, opinion evidence as to expert witnesses, and we
25 had Carlo Rossotti with respect to tool marking

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1 impressions, Vito Shiraldi with respect to forensic
2 microscopy and Meghan Clement with respect to DNA;
3 7.22, impeachment of witnesses by prior inconsistent
4 statements; 7.23, impeachment by bias or prejudice; a
5 charge with respect to circumstantial evidence, the
6 differences between direct and circumstantial.

7 MR. CHAMBERLAIN: Judge, 7.02 was impeachment?

8 THE COURT: 7.02 deals with credibility of
9 witnesses.

10 Now, a charge with respect to circumstantial and
11 direct evidence; a charge with respect to --

12 MR. CHAMBERLAIN: Judge, excuse me for
13 interrupting. Do you have that section number for the
14 circumstantial evidence charge? There are a number of
15 them.

16 THE COURT: I have my own here I use and will be
17 glad to let you read it, Mr. Chamberlain, at the
18 conclusion.

19 11.0 with respect to confessions, admissions and
20 statements; and what I am going to do is instruct the
21 jury that with respect to the statement made to the
22 Detective McHugh on April 20th and Detective McHugh
23 and Parpan on May 3rd, we have to deal with the
24 in-custody issue as well as the voluntariness issue.
25 With respect to the statement to Police Officer

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1 Stark, we only have to deal with the voluntariness
2 issue.

3 Now we get to the specifics with respect to what
4 I tell the jury. There's two counts, count one is
5 murder in the second degree; count two, again, is
6 murder in the second degree. The first one is
7 intentional murder in the second degree and the
8 second one is depraved indifference.

9 CJI 42:06 which deals with the verdict sheet;
10 42:07, jury's duty to deliberate; 42:16, exhibits;
11 42:20 is designation of foreperson; 42:25 is the
12 requirement of unanimous verdict.

13 MR. CHAMBERLAIN: May I interrupt, Judge?

14 THE COURT: Yes.

15 MR. CHAMBERLAIN: With respect to the requirement
16 of unanimous verdict, will you instruct the jury that
17 while they must confer and consider their fellow
18 jurors, they must, at the end, individually vote
19 their own consciences.

20 THE COURT: I give them a similar charge but not
21 under that subdivision.

22 CJI 42:07 on the jury's duty to deliberate, I
23 think will encompass your request, Mr. Chamberlain.

24 MR. CHAMBERLAIN: All right then.

25 THE COURT: Then I go into some conclusory

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1 language.

2 Now, do the People have any exceptions?

3 MR. BIANCAVILLA: No.

4 THE COURT: Any additional requests by the
5 People?

6 MR. BIANCAVILLA: Not at this time, Judge.

7 THE COURT: Mr. Chamberlain, any exceptions?

8 MR. CHAMBERLAIN: No.

9 THE COURT: Any additional requests.

10 MR. CHAMBERLAIN: Yes, Judge. I would request
11 that the Court charge the jury CPL 190.40,
12 specifically that when a witness testifies before a
13 grand jury and answers questions responsive to the
14 inquiry of the People, they automatically get
15 immunity.

16 THE COURT: Do you wish to be heard,
17 Mr. Biancavilla?

18 MR. BIANCAVILLA: We object. There's no basis
19 for that.

20 MR. CHAMBERLAIN: There's every basis in the
21 world, Judge.

22 MR. BIANCAVILLA: I'll provide you with case law.

23 MR. CHAMBERLAIN: Will you please let me finish?
24 I'm so tired of this, Judge.

25 THE COURT: Excuse me. Excuse me. Look, there's

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1 no jury here. Let's not start arguing.

2 MR. CHAMBERLAIN: I'm not arguing in front of the
3 jury.

4 THE COURT: I understand that. I want to hear
5 from both of you and then I'll give my ruling or
6 reserve.

7 Mr. Biancavilla?

8 MR. CHAMBERLAIN: I was in the middle of a
9 sentence when you interrupted.

10 THE COURT: All right. Mr. Chamberlain, why
11 don't you finish?

12 MR. CHAMBERLAIN: He says there's no basis,
13 Judge. He made a statement on the record in front of
14 this jury --

15 THE COURT: Who made a statement?

16 MR. CHAMBERLAIN: Mr. Biancavilla.

17 THE COURT: I already told the jury what the
18 attorney say is of no moment, is not evidence and
19 should be disregarded, and I'll tell them that again
20 during my final charge.

21 MR. CHAMBERLAIN: The felony minutes that we were
22 discussing showed that he signed no waiver, and, if he
23 signed no waiver, and this is -- he got immunity.

24 MR. BIANCAVILLA: As does every other witness in
25 the State of New York who testifies before a grand

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1 jury. There was nothing elicited from the testimony
2 of this witness that he obtained -- that he made any
3 agreement with the district attorney's office in order
4 to obtain that immunity; therefore, it's irrelevant
5 before this jury, or you might as well give that
6 charge to every single jury trial we have. That's my
7 point.

8 MR. CHAMBERLAIN: It's clearly not irrelevant,
9 Judge. It's the most relevant thing because he got
10 immunity and he got a free ride on his participation
11 in this matter, which, at the very least, included a
12 felony of criminal facilitation in the first degree
13 which is a felony.

14 His testimony on cross indicated either he
15 didn't know what he was talking about or he was
16 deliberately being evasive. Mr. Biancavilla kept
17 objecting and said out loud, as an officer of the
18 court, you know he got immunity.

19 MR. BIANCAVILLA: Judge, there was no agreement
20 for that.

21 MR. CHAMBERLAIN: He got immunity. It's a matter
22 of record.

23 MR. BIANCAVILLA: There was no agreement to get
24 that immunity and, therefore --

25 THE COURT: Counsel.

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1 MR. BIANCAVILLA: -- to be relevant --

2 THE COURT: I'm reserving for a moment. I
3 understand your arguments.

4 MR. BIANCAVILLA: Thank you, Judge.

5 THE COURT: Anything else?

6 MR. CHAMBERLAIN: Yes, Judge. The defense would
7 request a charge concerning Mr. Kane's -- Mr. Kane,
8 that the evidence might indicate that he was -- the
9 jury can find from the evidence that he was involved
10 in either accessorial conduct, which I would ask the
11 Court to define, or that he was involved in
12 facilitating a homicide by cleaning up the scene.

13 THE COURT: Where is the evidence?

14 MR. CHAMBERLAIN: He cleaned up the scene, Judge.
15 He cleaned up the evidence. I will read from
16 Judge Ort's decision after a hearing --

17 THE COURT: I understand that. What Judge Ort
18 says is one thing. What came out on the stand, yes,
19 he testified he cleaned up the evidence, but what does
20 that have to do with the accomplice charge?

21 MR. CHAMBERLAIN: I think a reasonable view of
22 the evidence, Judge, could be that this man was an
23 accomplice. He -- his testimony is he invites the
24 person he says committed the crime up there. He
25 insists he not leave. He does nothing to stop the

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1 crime. He helps clean up the crime afterwards. He
2 doesn't report the crime. He lies about it when he is
3 questioned about it, and he continues to lie about it
4 for a period of weeks. All that is evidence of
5 accessorial conduct and any reasonable view of this
6 evidence would be that.

7 I think, Judge, my understanding of Judge Ort's
8 decision was it was a conclusion of law -- I'm
9 reading from Judge Ort's decision --

10 THE COURT: I understand. I have read his
11 decision, but what does Judge Ort's decision have to
12 do with the price of milk, so to speak?

13 That is his finding of fact with respect to a
14 Huntley hearing. I'm the trial judge with respect to
15 this trial. I have to make the determination as to
16 whether there's a reasonable view of the evidence.

17 MR. CHAMBERLAIN: Judge, based upon the
18 statement, as Judge Ort found, and the evidence came
19 out here, John Kane admitted he assisted Mr. Scrimo in
20 tidying up the crime scene.

21 THE COURT: Mr. Chamberlain, whatever came out in
22 the hearing may not come out in a trial. Why are you
23 bringing up Judge Ort's decision?

24 MR. CHAMBERLAIN: That evidence came out in the
25 trial.

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1 THE COURT: That's what you should argue, not
2 what's in Judge Ort's decision.

3 MR. BIANCAVILLA: Judge, in response to
4 Mr. Chamberlain's comments, the People would concede
5 that evidence did come out during the trial. However,
6 in People versus Dagnone 187 AD2d 604, Appellate
7 Division Second Department, decided on November 16th,
8 1992, the court stated as follows:

9 The trial court also properly declined the
10 defendant's request to charge that the jury could
11 determine as a question of fact whether the
12 prosecution's principal witness was an accomplice on
13 the murder count since there was no reasonable view
14 of the evidence to support such a charge. Even if
15 the witness knowingly assisted the defendant in
16 disposing of the gun and his blood stained clothes
17 and gloves, so as to be guilty of the crime of
18 hindering prosecution as an accessory after the fact,
19 no accomplice charge would be warranted under CPL
20 60.22.

21 In addition, for the same proposition set forth
22 in this case, judge, I would cite People versus Sacco
23 at 199 AD2d 288, another Second Department case from
24 1993, and, People versus Pepe 259 AD2d 949, Fourth
25 Department, decided March 19th, 1999.

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1 MR. CHAMBERLAIN: With respect to the cases cited
2 by the People, at this point we are talking about
3 criminal facilitation. The cases cited -- the
4 facilitation does not mean the accomplice testimony is
5 not on point. I think the evidence shows he admitted
6 to facilitation.

7 THE COURT: How did he admit to facilitation?
8 Where is a reasonable view of the evidence of that?

9 MR. CHAMBERLAIN: He cleaned up the scene.

10 THE COURT: Facilitation would be something that
11 happened before.

12 MR. CHAMBERLAIN: No. Afterward. Afterward,
13 facilitation is --

14 THE COURT: Did you hear what Mr. Biancavilla
15 just placed on the record?

16 MR. CHAMBERLAIN: What he just placed on the
17 record is you can't use facilitation as evidence of
18 accomplice. Under the accomplice theory, he can be
19 charged with the underlying murder. I believe the
20 reason -- unlike that case, a reasonable view of the
21 evidence in this case is including the fact he invited
22 the person up, and according to him, he kept the
23 person from leaving. He didn't do anything to stop
24 the crime. He helped clean up the crime. He didn't
25 report the crime. He lies about the crime.

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1 All that evidence would be evidence, not only of
2 facilitation, but I think all of that evidence unlike
3 the case he cited, that evidence, a reasonable view
4 of that evidence, would allow him to be charged as an
5 accomplice. If he's charged as an accomplice, his
6 testimony requires corroboration and I would request
7 that charge.

8 THE COURT: There's no reasonable view of the
9 evidence that Mr. Kane convinced the defendant to come
10 up there for the purposes of committing a crime.
11 There's no reasonable view of the evidence that
12 Mr. Kane did anything in advance to cause me to charge
13 with respect to accomplice.

14 MR. CHAMBERLAIN: I respectfully submit, Judge,
15 the jury heard Mr. Kane say he lied. The jury can
16 decide what part --

17 THE COURT: What does that have to do with -- and
18 I'll read again, I happen to have Dagnone too, this is
19 what the Second Department said:

20 Even if the witness knowingly assisted the
21 defendant in the disposing of the gun and blood
22 stained clothes and glove, so as to be guilty of the
23 crime of hindering prosecution as an accessory after
24 the fact, no accomplice charge will be warrantied
25 under CPL 60.22.

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1 MR. CHAMBERLAIN: I agree with that, Judge, but
2 this is not all after the fact. That case is clearly
3 distinguishable from this case.

4 THE COURT: What happened before? You tell me.
5 Where is the reasonable view of the evidence that
6 something happened before the murder?

7 MR. CHAMBERLAIN: The jury understands and they
8 can believe that he went up there -- I don't know what
9 he went up there for, but whether he went up --

10 THE COURT: The only reasonable view of the
11 evidence was that they went up there to drink beer.

12 MR. CHAMBERLAIN: That's assuming the jury
13 believes him. Why would -- why would he -- why would
14 he insist on somebody -- his testimony was that the
15 defendant had already been told to go home. This was
16 earlier in the bar.

17 Why would he ask that person to come up to drink
18 beer, just to drink beer? Why would he ask that
19 person to stay -- there's a reasonable interpretation
20 of his conduct, particularly when he didn't do
21 anything to stop this thing and then cleaned up the
22 scene. All that conduct indicates activity before
23 and after, and a jury can interpret that as he was
24 taking part in this crime.

25 THE COURT: Mr. Biancavilla, would you like to be

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1 heard?

2 MR. BIANCAVILLA: I think I've said enough,
3 Judge.

4 THE COURT: There's no reasonable view of the
5 evidence, Mr. Chamberlain, that would cause me to
6 charge an accomplice to the crime. Accessory after
7 the fact is not an accomplice for the purpose of
8 corroboration requirements, nor is there any
9 reasonable view of the evidence that Mr. Kane did
10 anything before this murder to cause me to charge
11 accomplice. You have an exception.

12 Anything further?

13 MR. BIANCAVILLA: Nothing from the People, Judge.

14 THE COURT: Mr. Chamberlain?

15 MR. CHAMBERLAIN: You're not charging accessory
16 after the fact either?

17 THE COURT: No, sir.

18 MR. CHAMBERLAIN: Or criminal facilitation which
19 would include --

20 THE COURT: Tell you what I will do for you. I
21 am not charging -- I'll give you the opportunity over
22 the weekend, find me the cases that tell me I should
23 be charging this. I know of none.

24 Anything further?

25 MR. BIANCAVILLA: No, Judge.

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MR. CHAMBERLAIN: No, Judge.

THE COURT: We'll see you Monday morning.

* * *

(Whereupon, the above matter was adjourned to
May 20th, 2002.)